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Supreme Court of the United States

OCTOBER TERM, 1950

No. 108

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON, PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 2, 1950.

CERTIORARI GRANTED DECEMBER 11, 1950.

TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

No.....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., AND WILLIAM PATTERSON, PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

PRINTED BY RANSDELL INCORPORATED
WASHINGTON, D. C.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L. and WILLIAM PATTERSON, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

STATEMENT UNDER RULE 15-B.

This case comes to this court upon the petition of Local Union 501 of the International Brotherhood of Electrical Workers, and William Patterson, to review and set aside an order of the National Labor Relations Board dated April 12th, 1949.

The proceeding had its origin by an amended charge filed by one Samuel Langer with the National Labor Relations Board on or about June 16th, 1948.

The Board, by its Acting Regional Director for the Second Region, issued a complaint on or about June 24th, 1948, which alleged in substance that Local 501 and William Patterson had been engaged in and continued to engage in acts constituting unfair labor practices, affecting commerce, within the meaning of Section 8(B), subsection (1) (A) and (4) (A) and Section 2, Subsections (6) and (7) of the National Labor Relations Act.

Petitioners made answer to said complaint on or about July 9th, 1948.

Hearings were held before Earl S. Bellman, Esq., the Trial Examiner designated by the Board on August 4, 5 and 6th, 1948.

The petitioners, the Board and Samuel Langer the complainant, were present, represented and participated in such hearings.

On December 31, 1948, the Trial Examiner issued an intermediate report dismissing the complaint.

On or about January 18th, 1949, the Board filed its exceptions to the Intermediate Report.

On or about the 4th day of February, 1949, petitioners filed exceptions to certain portions of the Intermediate Report.

On December 31, 1948, the Board made an order transferring the case to be continued before the Board.

On or about January 18th, 1949, petitioners filed a request in writing for an oral argument, which was denied by the Board in its decision and order dated April 12th, 1949.

On April 12, 1949, the Board made and filed its decision and order, which is here sought to be reviewed, which decision and order reversed certain Findings and Conclusions set forth in the Intermediate Report.

By petition dated May 16th, 1949, petitioners prayed this court for a review of said decision and order of the Board and prayed that this Court set aside the said decision and order of the Board.

None but petitioners have sought review of said Order.

On June 24th, 1949, the Board served its answer to the petition, as well as a prayer for the enforcement of the order herein sought to be reviewed.

On the 24th day of June, 1949, the Board certified this Record to the Court.

NLRB 508
(10-20-47)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that International Brotherhood of Electrical Workers, Local 501,

(Name of labor organization or its agents)

AFL, and William Patterson at 9 West Prospect Avenue, City of Mt. Vernon, State of New York has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b) subsections 1(A) and (4)(A) of said Act in that: (Recite in detail in paragraph 2 the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts).

2. Commencing on or about April 16, 1948, and thereafter, the aforesaid International Brotherhood of Electrical Workers, Local 501, AFL, and its agent, William Patterson, induced and encouraged the employees of Nicholas Deltoro, a carpenter contractor, to engage in a strike or concerted refusal in the course of their employment as carpenters at the construction job at Ridge Street and Douglas Road in Greenwich, Connecticut, to perform services with the object of forcing or requiring the general contractor, Georgi Construction Company, to cease doing business with the undersigned.

By these and other acts, the International Brotherhood of Electrical Workers, Local 501, AFL, and its agent, William Patterson, have restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Name of Employer Samuel Langer.

4. Location of plant involved 108 Purdy Avenue, Port (Street)
Chester, New York Employing 3.
(City) (State) (Number of workers)

5. Nature of business Electrical contractor.

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f) (A), 9(f) (B) (1), and 9(g) of said Act as amended as evidenced by letter of compliance issued by the Department of Labor and bearing code number..... The financial data filed with the Secretary of Labor is for the fiscal year ending..... A Certificate has been filed with the National Labor Relations Board in accordance with Section 9(f) (B) (2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

7. Each of the officers of the union has executed a non communist affidavit as required by Section 9(h) of the Act.

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

SAMUEL LANGER
(Full name of party filing charge)

108 Purdy Ave., Port Chester, N. Y., Port Chester 5-1114
(Address) (Street) (City) (State) (Telephone number)

DO NOT WRITE IN THIS SPACE
Case No.
Date filed
9(f), (g), (h) cleared

By SAMUEL LANGER

(Signature of representative or person filing charge)

(Title or office, if any)

Subscribed and sworn to before me this 16th day of June 1948, at New York, N. Y. as true to the best of deponent's knowledge, information and belief.

JAMES V. ALTIERI

(Board Agent)

B-3 26-080

(SUBMIT ORIGINAL AND FOUR COPIES OF THIS CHARGE)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40

COMPLAINT

2 It having been charged by Samuel Langer, 108 Purdy Avenue, Port Chester, New York, that International Brotherhood of Electrical Workers, Local 501, A. F. of L., and William Patterson, both of 9 West Prospect Avenue, Mt. Vernon, New York, herein jointly called the respondents, have engaged in and are now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended June 23, 1947, Public Law 101, 80th Congress, Chapter 120, First Session, hereinafter called the Act, the General Counsel of the National Labor Relations Board, hereinafter called the Board, on behalf of the Board, by the Regional Director of the Second Region, designated by the Board's Rules and Regulations, Series 5, Section 203.15, hereby issues this Complaint and alleges as follows:

1. Samuel Langer is an electrical contractor having an office and place of business at 108 Purdy Avenue, in the City of Port Chester, State of New York, where he is engaged in the business of contracting for and carrying

out work in connection with the installation of wiring and electrical equipment on construction projects and other premises, including premises engaged in the production of goods for interstate commerce.

2. During the past year, said Samuel Langer has performed work on contracts awarded to him for the installation of electrical wiring and equipment, in the total sum of approximately $24,443.96. Of this total, approximately $8,403.50 represents contracts for work performed in the State of Connecticut, and approximately $16,041.46 represents contracts for work performed in the State of New York. The total value of construction projects on which Langer has had contracts for electrical work during the past year, as aforesaid, is in excess of $550,000.

3. During the past year, the said Samuel Langer purchased material and equipment, such as electrical wire, electrical boxes, cable, receptacles, fixtures, pipe, meter equipment and kindred products, totaling approximately $8,905.66 in value, all of which was delivered to his place of business at 108 Purdy Avenue, in the City of Port Chester, State of New Work. Of this total material thus purchased by the said Samuel Langer during the past year, approximately $5,098.66 represents products purchased from suppliers in the State of Connecticut and shipped and delivered to him from the State of Connecticut to his place of business in New York.

4. In performing work on contracts for the installation of electrical wiring and equipment on construction projects in the State of Connecticut during the past year, the said Samuel Langer transported material for installation on said projects from his place of business in the City of Port Chester, State of New York, to the various job sites in the State of Connecticut. Said material so transported had a value of approximately $2,700.

5. Substantial portions of the material purchased by the said Samuel Langer and shipped and delivered to his place of business in the City of Port Chester, State of New York, from suppliers located in the States of Connecticut and New York, are manufactured and produced in states other than said States of Connecticut and New York, and are sold, shipped and delivered to the said suppliers from various points in states other than the aforesaid States of Connecticut and New York.

6. The value of all materials used by all the trades on the various construction projects on which the said Samuel Langer has had the electrical contracts is in excess of approximately $275,000. A large proportion of this material originated outside of the state where the said construction took place.

4 7. During recent years, approximately $10,000,000,000 of new construction annually has been erected by the construction industry in which activities substantial amounts of material and equipment have been shipped and reshipped by means of the channels of interstate commerce. Approximately 75 percent of the establishments engaged in the construction industry do an annual business in dollar value comparable to that of Samuel Langer, and over 75 percent of the construction work done annually by special trades contractors, such as Samuel Langer, is performed by establishments comparable in size to the said Samuel Langer.

8. Respondent International Brotherhood of Electrical Workers, Local 501, A. F. of L., hereinafter called Local 501, is a labor organization within the meaning of Section 2, subsection (5) of the Act, and has its principal office and place of business at 9 West Prospect Avenue, in the City of Mount Vernon, State of New York, where it is engaged, and at all times hereinafter mentioned has been engaged, in promoting and protecting the interests of its members.

9. Respondent William Patterson is, and at all times mentioned herein has been, an agent for and business representative of Local 501, and is and has been engaged in promoting and protecting the interests of members of Local 501.

10. Respondent Local 501, Local 543 of United Brotherhood of Carpenters and Joiners of America, A. F. of L., and various other locals of the different construction trades, such as plasterers, bricklayers, plumbers, and the like, engaged in the construction industry in the area of Westchester County, New York, have formed and joined into the Building and Construction Trades Council of Westchester County, New York, a labor organization in which they have assumed reciprocal obligations and exchange mutual benefits, and which is governed by a constitution and by-laws regulating and controlling the mutual and reciprocal activities of the said affiliated locals. Respondent William Patterson is the representative of Local 501 on the said Building and Construction Trades Council of Westchester County and is a trustee of the said Trades Council.

11. Respondent Local 501 is also represented in and belongs to the Greenwich Building and Construction Trades Council of Greenwich, Connecticut, an organization similar to that described in paragraph 10 above, but consisting of locals operating in the area of Greenwich, Connecticut.

12. Nicholas Deltoro is a carpenter contractor, with an office and place of business at 136 Pearl Street, in the City of Port Chester, State of New York. Said Nicholas Deltoro is engaged in the business of performing carpentry work on premises being constructed in the States of New York and Connecticut.

13. The employees of the aforesaid Nicholas Deltoro are members of and are represented by Local 543 of United

Brotherhood of Carpenters & Joiners of America, A. F. of L.

14. On or about March 16, 1948, Samuel Langer had entered into a subcontract for the performance of the electrical work on a building to be constructed at the intersection of Ridge Street and Douglas Road, in Glenville, in the town of Greenwich, State of Connecticut, with Louis Georgi and Gustavo Georgi, copartners doing business as Georgi Construction Company, hereinafter called Georgi Construction Company, general contractors having the general contract for the construction of the said premises. The said Georgi Construction Company had sub-let various other portions of the work and had also entered into a subcontract with the aforesaid Nicholas Deltoro, carpenter contractor, under which the latter was to perform all of the carpentry work on the aforesaid construction project.

5 15. On or about April 16, 1948, respondents, by coercion, intimidation, threats and promises of benefits, and by picketing, induced and encouraged the employees of the said Nicholas Deltoro at the said construction project to engage in a strike and a concerted refusal in the course of their employment to perform services for the said Nicholas Deltoro, or the said Georgi Construction Company, the general contractor, an object thereof being to force or require the Georgi Construction Company to cease doing business with the said Samuel Langer.

16. Respondents have threatened to and now threaten hereafter to induce and encourage employees of other employers to engage in a strike or concerted refusal in the cour e of their employment to perform services for said other employers, with an object of forcing or requiring said other employers or other persons to cease doing business with the said Samuel Langer.

17. By the acts described above in paragraphs 15 and 16, respondents have engaged in and have induced and encouraged the employees of Nicholas Deltoro to engage in a strike or a concerted refusal in the course of their employment to perform services for said Nicholas Deltoro, an object thereof being to force or require Georgi Construction Company to cease doing business with Samuel Langer, in violation of Section 8(b), subsection (4)(A) of the Act. 6

18. By the acts described above in paragraphs 15 and 16, respondents have restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(b), subsection (1)(A) of the Act.

19. The activities of the respondents, described above in paragraphs 15 and 16, and each of them, occurring in connection with the operations of Samuel Langer and the building construction industry, described above in paragraphs 1, 2, 3, 4, 5, 6 and 7, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

20. The aforesaid acts of respondents, as set forth and described above, constitute unfair labor practices affecting commerce within the meaning of Section 8(b), subsections (1)(A) and (4)(A), and Section 2, subsections (6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 24th day of June, 1948, issues this Complaint against International Brotherhood of Electrical Workers, Local 501, A. F. of L., and William Patterson, respondents herein.

CHARLES T. DOUDS
Charles T. Douds, Regional Director National Labor Relations Board
2 Park Avenue
New York 16, New York

NATIONAL LABOR RELATIONS BOARD
SECOND REGION

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40. ANSWER

The above named Local 501, and William Patterson, by their attorney, SYDNEY A. SYME, answering the Complaint:

FOR A FIRST DEFENSE

1. Upon information and belief denies so much of allegation 1, as purports to allege "including premises engaged in the production of goods for Interstate Commerce."

2. Deny any knowledge or information sufficient to form a belief as to allegations 2-3-4-5-6-7 and 14. 7

3. Upon information and belief deny allegations 15-16-17-19 and 20.

FOR A SECOND DEFENSE

4. That the charges as set forth in the Complaint relate exclusively to the erection of a single residential building located on Ridge Street, in the Town of Greenwich in the State of Connecticut.

5. That any labor dispute in relation to this construction job, involve a job being solely conducted within the confines of the State of Connecticut.

6. That said construction job is in no manner whatsoever involved in Interstate Commerce, but is exclusively an Intrastate matter.

7. That by reason thereof the provisions of the Labor-Management Relations Act of 1947 have no application to this controversy.

8. That the National Labor Relations Board only has jurisdiction over the controversies in which Interstate Commerce is involved.

9. That the National Labor Relations Board has no jurisdiction in the instant matter.

FOR A FURTHER DEFENSE.

10. That the complaint fails to state a charge against Respondents upon which relief can be here granted.

FOR A FURTHER DEFENSE.

11. The Board lacks jurisdiction over the subject matter of the complaint.

FOR A FURTHER DEFENSE.

12. Respondents assert that the provisions of the Labor Relations Act of 1947, which the complainant seeks to enforce herein, are in violation of the provisions of the Constitution and Bill of Rights of the United States, and are likewise in violation of the Constitution and Bill of Rights of the State of New York, in that it tends to deprive respondents of the right of Freedom of Speech.

WHEREFORE Respondents move to dismiss the complaint and charges in this proceeding on the ground that the National Labor Relations Board is without jurisdiction for the reason that Interstate Commerce is not involved, and that the National Labor Relations Board has no jurisdiction of the subject matter, and in that the provisions of the Labor Management Relations Act of 1947, are unconstitutional as applied to the controversy herein.

WILLIAM PATTERSON

Respondent.

SYDNEY A. SYME

Attorney for Respondents,
#201 Main Street,
White Plains, N. Y.

STATE OF NEW YORK,
COUNTY OF WESTCHESTER, SS:

I, WILLIAM PATTERSON being first duly sworn on oath, depose and say that I am one of the respondents named herein; that I have read the foregoing answer and know the contents thereof; and that the statements therein as upon personal knowledge are true, and those upon information and belief I believe to be true.

Subscribed and sworn to before me this 9th day of July, 1948.

WILLIAM PATTERSON

ELIZABETH JACOB

Notary Public in the State of New York
Appointed for Westchester County.
Commission expires March 30, 1949.

NLRB 851
(8-22-47)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER.	Case No. 2-CC-40.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 12th day of July, 1948, at 10:00 A. M., in the Hearing Room on the 24th floor, 2 Park Avenue, New York, New York, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Amended Charge upon which the Complaint is based is attached hereto.

You are further notified that, pursuant to section 203.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in

the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

IN WITNESS WHEREOF the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be signed by the Regional Director for the Second Region on this 24th day of June, 1948.

CHARLES T. DOUDS,
Regional Director

National Labor Relations Board,
2 Park Avenue
New York 16, New York

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40

NOTICE OF POSTPONEMENT OF HEARING AND CHANGE IN TIME AND PLACE OF HEARING

11

PLEASE TAKE NOTICE that the hearing in the above-entitled matter, scheduled for July 12, 1948, is hereby postponed to August 2, 1948.

TAKE FURTHER NOTICE that the time and place of hearing is hereby changed to 11:00 A. M., in the Court Room of Police Headquarters, 350 North Main Street, Port Chester, New York.

Dated, New York, New York, July 8, 1948.

PAUL S. KUELTHAU,
Acting Regional Director

National Labor Relations Board
2 Park Avenue
New York 16, New York

NLRB-859
(6-15-46)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40.

ORDER POSTPONING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is postponed from August 2, 1948, to August 4, 1948, at the same time and place. 12

Dated at New York, New York, this 19th day of July, 1948.

CHARLES T. DOUDS
Regional Director

National Labor Relations Board.
2 Park Avenue
New York 16, New York

X-563
Rev. 7/48

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40.

ORDER DESIGNATING TRIAL EXAMINER

IT IS HEREBY ORDERED that Earl S. Bellman act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 5, of the National Labor Relations Board.

16 Dated, Washington, D. C., August 4, 1948.

WILLIAM R. RINGER,
Chief Trial Examiner

(Seal of National
Labor Relations Board).

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

In the Matter
of
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON,
and
SAMUEL LANGER

Case No. 2-CC-40.

Port Chester, New York,
Wednesday, August 4, 1948. 17

Met, pursuant to notice, at 11:00 A. M.
Before:
EARL S. BELLMAN, Trial Examiner.
Appearances:

JAMES V. ALTIERI and JACK DAVIS, appearing on behalf of General Counsel of the National Labor Relations Board.

SYDNEY A. SYME, ESQ., 201 Main Street, White Plains, New York, appearing on behalf of Respondents.

SAMUEL LANGER, 108 Purdy Avenue, Port Chester, New York, appearing for Samuel Langer.

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PROCEEDINGS

TRIAL EXAMINER BELLMAN: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of International Brotherhood of Electrical Workers, Local 501, AFL, and William Patterson and Samuel Langer, Case No. 2-CC-40.

19

The Trial Examiner conducting the hearing for the National Labor Relations Board is Earl S. Bellman, of Washington, D. C.

Will counsel and other representatives for the parties please state their formal appearances on the record at this time, even though you may have given your appearance sheets to the official reporter?

MR. ALTIERI: My name is James V. Altieri. I represent the General Counsel, together with Mr. Jack Davis, also from the office of the General Counsel.

MR. SYME: My name is Sydney A. Syme, 201 Main Street, White Plains, New York. I appear for both respondents, Local 501 and William Patterson.

Before you proceed, Mr. Examiner, I am ready to make a motion.

TRIAL EXAMINER BELLMAN: Will you defer any preliminary motions until after the formal opening?

MR. SYME: Yes, sir.

TRIAL EXAMINER BELLMAN: Are there any other appearances?

There appear to be none.

The official reporter makes the only official transcript of these proceedings, and all citations in briefs and arguments

must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

Proposed corrections of the transcript shall be submitted either by way of stipulation or motion to the Trial Examiner for his approval.

All matter that is spoken in the hearing room while the hearing is in session is recorded by the official reporter unless the Trial Examiner specifically directs an off-the-record discussion. So any request to go off the record should be directed to the Trial Examiner and not to the official reporter.

20

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings, and upon an appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence should be in duplicate. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit a copy before the close of the hearing, unless for good cause shown, such a copy is excused by the Trial Examiner.

Any party is entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic record of the hearing. In the absence of any request for oral argument, the Trial Examiner himself may ask for oral argument, and if, at the close of the hearing, he believes such argument will be beneficial to his understanding of the issues and the contentions, he may question the parties about the issues of fact and law involved.

Any party is also entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Trial Examiner, who, before the close of the hearing, will fix the time for such filing.

These preliminary remarks are for your general information and guidance throughout the course of the hearing.

MR. SYME: Mr. Examiner, in behalf of the respondents, Local 501 and Mr. Patterson, we move to dismiss the complaint and the proceedings upon the following grounds:

21

First, that no question of interstate commerce is here involved;

Second, that the National Labor Relations Board only has jurisdiction where interstate commerce is involved; third, that the National Labor Relations Board has no jurisdiction in this matter; fourth, that the National Labor Relations Board lacks jurisdiction over the subject matter set forth in the complaint; fifth, that the complaint does not state a charge against the respondents upon which relief can be hereby granted; sixth, that because of the small gross annual business conducted by the complainant, Samuel Langer, the National Labor Relations Board should decline jurisdiction in this matter; seventh, that the provisions of the Labor-Management Relations Act of 1947, which the complainant seeks to enforce, are in violation of the provisions of the Federal and State Constitutions and Bills of Rights, in that they tend to deprive respondents of the right of freedom of speech.

TRIAL EXAMINER BELLMAN: May I ask that there be no smoking in the hearing room while the hearing is in session, please?

I will now ask the reporter to read back the full motion of the respondents to dismiss, and will you follow the motion, please, Mr. Syme, and indicate whether the reporter has it just as you stated it.

(The motion made by Mr. Syme was read back by the reporter.)

TRIAL EXAMINER BELLMAN: You have heard the reporter read back your motion to dismiss. Is it stated correctly on the record? 22

MR. SYME: Yes, sir, it is.

TRIAL EXAMINER BELLMAN: Do you desire to argue this motion at this time, or do you prefer to have me rule on it without argument?

MR. SYME: I would like to argue it briefly.

TRIAL EXAMINER BELLMAN: All right.

Do you want to argue it now, or do you want a recess before you argue?

MR. SYME: I will take it up after recess, with your permission.

TRIAL EXAMINER BELLMAN: All right. Suppose we go ahead and have the formal papers presented by counsel for the General Counsel, without prejudice to your motion in any way, and then I will take a recess in order to look them over, and then you can argue your motion at that time.

MR. SYME: Mr. Examiner, I have prepared a brief, if you would like to have that.

TRIAL EXAMINER BELLMAN: On this motion?

MR. SYME: On the question involved here, yes, sir.

TRIAL EXAMINER BELLMAN: Well, you might want to file that after the formal papers are presented by counsel for the General Counsel and prior to your argument, then. Would you want to do that?

MR. SYME: I think that possibly if your Honor will take the time to read my brief, that will save argument.

TRIAL EXAMINER BELLMAN: All right. Suppose we let the General Counsel present his formal papers, and then you can present the brief, or I can take a recess and examine the brief.

24

MR. SYME: All right, sir.

MR. ALTIERI: I offer in evidence as General Counsel's Exhibit No. 1 the formal papers in the case.

TRIAL EXAMINER BELLMAN: Will you please indicate, then, what those papers are composed of?

MR. ALTIERI: Yes, sir.

General Counsel's Exhibit No. 1 consists of the charge, which was filed by the charging party, Samuel Langer, on June 16, 1948, against the International Brotherhood of Electrical Workers, Local 501, AFL, and William Patterson; the notice of hearing, dated June 24, 1948; the complaint; the affidavit of service of notice of hearing, complaint and amended charge—and, by the way, that charge to which I referred originally was an amended charge—and then we have return receipts from the Post Office Department, constituting proof of service of the foregoing papers; a notice of postponement of hearing and change in time and place of hearing, dated July 8, 1948, together with the affidavit of service of such notice of postponement, and return receipts of the Post Office Department, constituting proof of service of the notice; the answer of the respondents, verified by William Patterson, on behalf of both respondents.

MR. SYME: Mr. Altieri, I think that there was another notice of adjournment which adjourned this matter from August 2, 1948 to August 4, 1948. I have the form of your letter that I received from Mr. Davis. I don't think that is in your file. At least, you didn't mention it.

MR. ALTIERI: I may have overlooked it. I will check it.

You are correct, Judge Syme.

As part of General Counsel's Exhibit No. 1, at the end thereof, there is an order postponing the hearing from August 2, 1948, to August 4, 1948, and there is an affidavit of service of this order, together with the Post Office receipts with respect to the service of this notice on the respondents.

TRIAL EXAMINER BELLMAN: I take it, then, that there is no question as to the parties having received notice of the hearing, and its being postponed to this morning at eleven o'clock? 25

MR. SYME: We don't raise any question, but I thought that the record should be complete on that.

TRIAL EXAMINER BELLMAN: It should be, and thank you for calling it to our attention.

Is there any objection to this document's being received in evidence as General Counsel's Exhibit No. 1?

MR. SYME: No, sir.

TRIAL EXAMINER BELLMAN: There is no objection; it will be received in evidence as General Counsel's Exhibit No. 1, with its sub-parts.

(Document referred to was received in evidence as General Counsel's Exhibit No. 1.)

TRIAL EXAMINER BELLMAN: Would you like to have your brief received in evidence, Mr. Syme?

MR. SYME: Yes, sir. I ask to have this marked.

TRIAL EXAMINER BELLMAN: Do you have an extra copy for the exhibit file? We are supposed to have two copies, one the original and one the duplicate.

26

MR. SYME: I will look to see whether I have a spare copy here.

TRIAL EXAMINER BELLMAN: Off the record.

(Discussion off the record.)

TRIAL EXAMINER BELLMAN: On the record.

MR. SYME: I find that extra copy here, your Honor.

TRIAL EXAMINER BELLMAN: Is there any objection to the receipt of this brief in evidence, along with its duplicate, as Respondents' Exhibit No. 1?

MR. ALTIERI: I, of course, have no objection to the introduction of this brief as a statement of the views of Judge Syme on the law. Frankly, I am a little inexperienced in Board proceedings. This is my first case before the Board. However, it strikes me as a little unusual that a legal brief should be proffered as a formal exhibit. But if that is the customary procedure, I have no objection.

TRIAL EXAMINER BELLMAN: It is not the customary procedure, but it was offered as a legal argument. If you don't have any objection, though, I don't see any reason why it cannot be put into the record as an exhibit, instead of oral argument.

You are making no contention except that you are presenting that as your argument?

MR. SYME: That is my voice, yes, sir.

TRIAL EXAMINER BELLMAN: All right, the document, with its duplicate, will be received as the respondents' argument on the motion to dismiss.

(Document referred to was received in evidence as Respondents' Exhibit No. 1.)

TRIAL EXAMINER BELLMAN: Before I rule on the motion to dismiss, if counsel for the General Counsel wishes to argue this motion, he may be heard on that matter.

Now, first, are there any other preliminary matters that can be presented at this time before a recess which I am about to take? 27

MR. SYME: There is nothing that I can think of.

TRIAL EXAMINER BELLMAN: There appear to be no other preliminary matters, then.

I will reserve ruling, at least until after the recess, on the motion to dismiss, and until I have also heard from counsel for the General Counsel as to whether he wishes to argue orally, in the light of the presentation of the brief filed by the respondents in lieu or their oral argument to dismiss.

The hearing will be in recess for thirty minutes.

(Whereupon, a recess was taken.)

TRIAL EXAMINER BELLMAN: The hearing will be in order. 28

The document presented by the respondents and received in evidence as Respondents' Exhibit No. 1 has been duly considered by the Trial Examiner, along with the formal papers, General Counsel's Exhibit No. 1.

It appears that Respondents' Exhibit No. 1, in presenting arguments which go to the motion to dismiss, also argue certain assumed facts, facts apparently presumed to be established by evidence.

In reading this, I have considered that the argument there presents the respondents' theory of the case, assuming certain proof to be in, which, of course, is not so at this time. So, in asking counsel for the General Counsel to make any argument at this time which it is his desire to make, I am going to indicate that counsel for the General Counsel may also indicate his theory of the case, as to what the evidence will show, just as this document has done, this document which has been received in evidence as Respondents' Exhibit No. 1.

At this time if you wish to speak on this motion to dismiss, you may do so; if not, you may let the matter rest on the respondents' written argument, so to speak.

MR. ALTIERI: Well, I would like to make a comment or two, if I may.

TRIAL EXAMINER BELLMAN: Proceed.

29 MR. ALTIERI: In reading the memorandum of the respondents, of course the thing that stood out most in my mind was the assumption of certain facts not yet in evidence, upon which Mr. Syme relies, and an apparent overlooking of the fact that all the allegations in the complaint must be assumed as true on a motion which is directed to the complaint, for the reason that it allegedly fails to state a cause of action.

Now, I personally believe that the motion at this stage of the proceedings is so completely lacking in merit that my remarks should be brief, but in order that the position of the General Counsel may not be prejudiced by silence,

in view of the fact that we have no intimation as to how you, Mr. Examiner, feel in the matter, I would like to make a few remarks.

The first point in the memorandum submitted by Mr. Syme is directed to the proposition that interstate commerce is not involved in this case, that the activities that gave rise to the charge which has been filed in this case were purely local in character; that they occurred on a building project which was being constructed solely in the State of Connecticut, and, being purely local in character, therefore, this lacked the elements of transactions in interstate commerce that could vest the Board with jurisdiction in this case. Reliance is placed on the decision of the District Court in the case of Sperry v. the Denver Building and Construction Trades Council.

Now, I believe that the legal authorities in existence make it perfectly clear that the District Court ruling in that case was in error. I believe that the Examiner of the 30
National Labor Relations Board who heard the Board proceeding reached a conclusion to the contrary of that which was arrived at by the District Judge who passed upon the injunction phase of the matter, and I might state that it is now firmly held and clearly established by a line of Supreme Court decisions that the test of the Act's application is merely whether—and I now quote—"A stoppage of operations by industrial strife . . . " would or might impede or interrupt the free flow of goods in their normal channels in interstate commerce. I refer to the case of the National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U.S. 1, particularly pages 41 and 42.

That the operations which are affected by the unfair labor practices that are charged may be of a local character, as Mr. Syme repeatedly stresses in his memorandum, of course does not preclude the application of the Act.

31 As the Supreme Court pointed out in the case of Polish National Alliance v. the National Labor Relations Board, 322 U.S. 643—and I make particular reference to the material appearing on pages 647 and 648 of that decision, it said: "By that Act, Congress, in order to protect interstate commerce from adverse effects of labor disputes, has undertaken to regulate all conduct having such consequences that constitutionally it can regulate." I now omit some of the material, and then the Supreme Court goes on to state: "And so, in this Act, Congress has explicitly regulated not merely transactions or goods in interstate commerce, but activities which in isolation might be deemed to be merely local, but in the interlacings of business across state lines, adversely affect such commerce."

Significantly, for our situation and for the argument that respondents make a little further on in their brief with relation to the quantity or volume of business of the charging party and of the transactions involved in this case, the Supreme Court goes on to state in that same decision: "Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining the judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which, if left unchecked, may well become far-reaching in its harm to commerce."

Now, the situation before the Board results from the execution of what the complaint alleges to be an unlawful union policy in relation to Langer. The allegations in the complaint set forth clearly that Langer himself, apart from the question of the scale of his operations or the dimensions of his business, is engaged in activities having a very immediate and direct effect upon interstate commerce. Sub-

stantial portions of the material he purchases and uses in his business are purchased across state lines. His place of business is in New York, and he has performed work on a number of jobs in Connecticut, to which he has had occasion to transport material from his place of business in New York.

The complaint alleges, and the facts adduced at this trial will demonstrate, that Langer is also engaged in performing maintenance and electrical repair work for a number of manufacturing concerns that are themselves engaged in producing goods for interstate commerce.

It is very difficult to see how any merit can attach to the proposition that on the facts as alleged in the complaint, the General Counsel has failed to state a cause of action. 32

Of course, I think a larger view should be taken of the problem, and I will ultimately so urge at the conclusion of this hearing, that the policy of the union and the effect of the union practice must be viewed not only in relation to the immediate effect on Langer, but in the light of its potential effect on the other contractors in the industry in which both Langer and Local 501 are engaged.

In determining whether the policy of the union tends to or might affect commerce, we should not confine our attention to Langer's business alone or to the projects on which Langer has been engaged.

I now quote from the decision of the Supreme Court in the Polish National Alliance case, the Polish National Alliance v. the National Labor Relations Board, 322 U.S. 643, at page 648: "Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is 33

representative of many others throughout the country, the total incidence of which, if left unchecked, may well become far-reaching in its harm to commerce."

And as the Supreme Court has said in a case arising under the Sherman Act, Mandeville Island Farms, Inc., et al, vs. American Crystal Sugar Company, 68 Supreme Court 996: "It is enough that the individual activity, when
34 multiplied into a general practice, is subject to Federal control (Wickard v. Filburn, supra), or that it contains a threat to the interstate commerce that requires preventive regulation."

If it is established that the policy of this union, as reflected immediately in the circumstances before the Board, in relation to Langer, is to engage in activities that are proscribed by this Act, the potential effect of such activities on interstate commerce must necessarily be considered as extending beyond the actual immediate effect on Langer and his operations—and I may interpolate at this time that we are going to indicate that this will be a very substantial effect—but on its potential effect on interstate commerce in so far as the construction industry is concerned generally, in which this union and this local are very directly engaged.

Since the respondents have relied so largely on the decision of the District Court in the case of Sperry v. the Denver Building Trades Council, and on the decision of Supreme Court Justice Hughes in the Schechter case, which apparently influenced the District Court's decision there, I would like to direct myself very briefly to the proposition that it does not matter that the alleged effect on interstate commerce is indirect.

We find much of the respondents' legal argument is predicated on the proposition that, at best, the effect here which probably ultimately would have to be made on inter-

state commerce, is indirect. Now, having the effect of overruling, in effect, the line of reasoning that formerly had been reflected in some earlier Supreme Court decisions, the Supreme Court has more recently held, as it stated in the case of Wickard v. Filburn, 317 U.S. 11: "Even if appellant's activity is local, and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this, irrespective of whether such effect is what might at some earlier time have been defined as direct or indirect."

That is all, Mr. Bellman.

MR. SYME: May I just say a few words?

TRIAL EXAMINER BELLMAN: Before you speak, I would like to ask counsel for the General Counsel whether there are any matters of fact presented in respondents' Exhibit No. 1 as a basis for the theory as developed by counsel for the respondents that counsel for the General Counsel wants to take issue with specifically and with respect to which he wishes to state a different theory. 35

MR. ALTIERI: Well, Mr. Bellman, I would much rather —unless you direct otherwise—not be bound in any way by any statements of fact appearing in this exhibit, and which appear there in anticipation of what it is expected that Mr. Syme will prove or what he expects to adduce.

I would rather let the hearing develop and have the evidence, as it is adduced at this hearing, disclose what the facts are. I do not want to be placed in the position of making any statement at this stage of the hearing which may in any way prejudice the facts as they are developed and adduced at the trial. I would rather have that done in the way of presentation of evidence.

MR. SYME: I just want to say one thing: On point 3, which is in our brief, unquestionably that cannot be raised until the close of the case, because that point is based on proof which we anticipate will be presented when Langer takes the stand; and for that reason, when I handed the brief to you, I should have taken Point 3 out. However, with
36 your Honor' permission, I would like to leave it in to be used at the proper time.

MR. ALTIERI: If it is going to help the Examiner in making a ruling, I will make this addition of fact: That the contract on which Mr. Langer performed work was $325, as Mr. Syme alleges.

MR. SYME: With that correction, I now desire to replace Point 3 in the brief.

Now, may I say this, and this goes to the meat of the matter, that when you have read this complaint, the one served on us in this proceeding, you will find that this complaint is directed to this one residential job in Greenwich, Connecticut. There is nothing in this complaint which would justify any introduction of proof, in the event they offer it, nothing in this complaint to show that these respondents conducted similar proceedings with anybody outside of Langer. The whole complaint is built around Langer, and no one else, and in the remarks that counsel just made to you, he was talking about acts with other builders of other contractors, but the complaint is not broad enough to allow them to go into such proof with respect to the respondents in this case. If you will read the complaint, you will see that it applies only to this one job, this one residence.

TRIAL EXAMINER BELLMAN: I have read it,

MR. SYME: Then you will find that it is exclusively with respect to the Langer episode, and with respect to no other contarctors. 37

TRIAL EXAMINER BELLMAN: Well, there is no other allegation in the complaint with respect to other contractors than Langer.

MR. ALTIERI: I don't know whether a direct answer can be made to that. The complaint does set forth specifically the alleged unfair labor practices in relation to Langer. It does allege that this activity is in violation of 8(b)(4)(a) and that it affects commerce.

I might suggest that some analogy exists between this situation, that is, the situation in the discussion we are now having, and a case where an employer has discriminated agaist certain named employees. When the Board passes upon the case and the evidence presented, it neither confines itself to the consideration of the specific discrimination against those employees, nor the remedy which it contemplates as a proper remedy with respect to the particular employees; but it considers the potential effect of that activity in relation to discrimination against employees generally, the industrial strife to which such discrimination might lead, and its ensuing consequences, and its effect on interstate commerce. 38

Now, I believe that here likewise, today the union is doing this to Langer, and tomorrow it is going to do it to some other employer with whom it has a dispute.

Since the Act was enacted to entertain unfair labor practice charges against unions, it is the duty of the Board, I believe, to consider the effect of that type of unfair labor practice with respect to employers generally, and not to Langer alone.

TRIAL EXAMINER BELLMAN: In any event, as part of your proof, and going to this question of potential effect, you are not proposing to introduce other types of activities similar to Langer's?

MR. ALTIERI: I am not.

MR. SYME: Then we stand clear that we are charged here solely with the one act or series of events against Langer and no one else. They have brought us into court on that complaint, and we are entitled to meet that alone, and not something else that they haven't incorporated in their complaint, namely, other contractors or jobbers, or whatever you call them.

39

MR. ALTIERI: Of course, when I say that, I want to make it perfectly clear that we do not intend to confine ourselves in the presentation of evidence to activities where Langer alone played a part. Wherever we believe the evidence is relevant, we intend to introduce such proof.

TRIAL EXAMINER BELLMAN: I have studied the complaint, and the proceedings will be governed, of course, by what is alleged in the complaint.

I believe the appropriate procedure at this time, everything considered, is to deny the respondents' motion to dismiss, without prejudice to renewal thereof at the conclusion of the evidence, and without prejudice to the resubmission or reference to the respondents' argument, as incorporated in respondents' Exhibit No. 1, for further use in relation to any such renewed motion.

MR. SYME: In order to protect our rights, may I take an exception, or do I understand that we have an exception to any of your adverse rulings?

TRIAL EXAMINER BELLMAN: You have an automatic exception to any adverse rulings, and that automatic

exception will stand you in complete stead of your taking an exception by rising and making it on the record or not. I assure you of that now, you have your automatic exception.

MR. SYME: All right, sir.

TRIAL EXAMINER BELLMAN: Are there any other preliminary matters? 40

There appear to be none.

Counsel for the General Counsel may proceed, unless you prefer to take the luncheon recess at this time.

MR. ALTIERI: I have one witness that I would like to put on now, because he is a contractor, and he is pouring concrete, and he would like to get away. If we could put him on and dispose of him, I would much prefer it that way.

TRIAL EXAMINER BELLMAN: All right, you may call your witness.

MR. ALTIERI: Mr. Louis Giorgi, please.

LOUIS GIORGI a witness called by and on behalf of the 41 General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name for the record.

THE WITNESS: Louis Giorgi.

TRIAL EXAMINER BELLMAN: What is your address?

THE WITNESS: 30 Cottage Street, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Mr. Giorgi, you are a partner in the Giorgi Construction Company? A. Yes, sir.

41 Q. Who is your partner? A. Gustave Giorgi.

Q. What is the nature of your business? A. Mason contractor.

Q. Do you ever undertake to do general contracts for the construction of buildings? A. Yes, sir.

Q. How long have you been in business, Mr. Giorgi? A. Well, with my new partner, about three years.

Q. Prior to that, had you been in the same business? A. Yes, with my brother.

Q. For how long? A. Oh, about 20 years.

Q. Did you say about 20 years? A. Yes, About 20.

Q. Do you belong to any union, Mr. Giorgi? A. Yes, Local 48 of the Bricklayers, Masons and Plasterers.

Q. How long have you been a member of that union? A. Approximately 25 or 26 years.

Q. So that either as an employer or an employee, you have been in the construction industry for approximately 25 years? A. Yes, 25 years, maybe 30 years.

Q. Can you tell us the approximate dollar volume of the business done by you in 1947?

42 MR. SYME: I object to that as immaterial.

TRIAL EXAMINER BELLMAN: I will overrule the objection.

A. Do you want that question answered?

Q. (By Mr. Altieri) Yes, answer it. A. Approximately 60,000.

Q. That represents the total of the contract prices on jobs that you put up during that year; is that correct?

A. Labor and material.

TRIAL EXAMINER BELLMAN: Was that the total contract price, including labor, material and profit?

THE WITNESS: Labor, material and profit. The total amount of work done was approximately $60,000.

TRIAL EXAMINER BELLMAN: All right.

Q. (By Mr. Altieri) Where is your place of business located, Mr. Giorgi? A. 30 Cottage Street.

Q. Is that in Port Chester, New York? A. That is in 43
Port Chester, New York, yes.

Q. Now, does any part of that $60,000 represent work performed outside the State of New York? A. Yes.

Q. Where have you performed work other than in the State of New York? A. Greenwich, Connecticut.

Q. Where do you purchase the material that you use in connection with your work, Mr. Giorgi? A. F. C. Mertz & Son.

Q. Where are they located? A. At the foot of Westchester Avenue, in Port Chester, New York.

Q. And where you have performed work in Connecticut, have you purchased your material from F. C. Mertz & Company? A. At that time, yes.

Q. Now, where did they deliver that material? A. To the job.

Q. To the job site? A. That's right.

Q. Did you have the general contract for the construction of a private house at Ridge Street and Douglas Drive in the State of Connecticut? A. Yes.

MR. SYME: What town?

Q. (By Mr. Altieri) Greenwich, Connecticut, was that?

A. Yes. I think Glenville is under Greenwich. It all goes through Greenwich, Connecticut, building permits and all.

TRIAL EXAMINER BELLMAN: In other words, the permits you got in relation to this job came from the City of Greenwich?

THE WITNESS: That's right, and it was in a subdivision called Glenville.

TRIAL EXAMINER BELLMAN: How far is that from the center of Greenwich?

44 THE WITNESS: About two miles.

TRIAL EXAMINER BELLMAN: Do you consider that a suburb of Greenwich?

THE WITNESS: That's right.

TRIAL EXAMINER BELLMAN: All right, proceed.

Q. (By Mr. Altieri) Did you enter into a contract with the owner for the construction of that house? A. Yes, sir.

Q. When was that contract entered into, do you recall? A. well—

Q. The approximate date will do. A. Approximately in December.

Q. What year? A. 1946.

Q. 1946 was two years ago. A. No, no, I mean 1947.

Q. When did you commence work on this house? A. About the middle of December 1947.

Q. 1947? A. That's right.

Q. What was the total contract price on this house, Mr. Giorgi? A. $15,200.

Q. Now, did you sublet any part of the work to other contractors? A. Yes.

Q. To whom did you sublet the electrical wiring and electrical equipment installation, to whatever extent that

might have been necessary, on this job? A. Samuel Langer.

Q. To whom did you sublet the carpentry work? A. Nicholas Deltoro.

Q. Do you know whether Nicholas Deltoro has a place of business in New York? A. Yes.

Q. Do you know where his place of business is? A. Yes, sir, Pearl Street, Port Chester, New York.

Q. Mr. Langer's place of business is also in Port Chester, New York? A. That's right.

TRIAL EXAMINER BELLMAN: Just one moment. 46
Off the record, please.

(Discussion off the record.)

TRIAL EXAMINER BELLMAN: On the record.

Q. (By Mr. Altieri) Did you do any part of the work on this job yourself? A. Yes, all the mason work.

Q. Where did you purchase the material—

TRIAL EXAMINER BELLMAN: Just one moment, please. When you say yourself, do you mean that you did it physically yourself?

THE WITNESS: No, I had men. I employed men.

TRIAL EXAMINER BELLMAN: In other words, you had men who were your direct employees who did the mason work?

THE WITNESS: That's right.

Q. (By Mr. Altieri) Where did you purchase the material that was used by you in connection with the portion of the work that you and your men did on this job?

MR. SYME: I object to that as immaterial and as having nothing to do with the Langer contract.

TRIAL EXAMINER BELLMAN: I believe this comes completely within the allegations of paragraph 6 of the complaint, and after studying same, I will overrule the objection.

You may answer.

A. From F. C. Mertz & Son.

Q. (By Mr. Altieri) And was the material delivered by F. C. Mertz to the job site in Connecticut? A. Delivered to the job site, that's right.

Q. Now did Samuel Langer, the electrical contractor, complete any part of the work that he was to do under his contract on this job for you? A. All the roughing.

TRIAL EXAMINER BELLMAN: All the roughing?

47 THE WITNESS: Yes.

Q. (By Mr. Altieri) Now, I wonder whether you would mind explaining to the Trial Examiner what you mean by the roughing work. A. Well, by the roughing work, it is cable and outlet boxes for switches and ceiling lights and base plugs.

Q. That work has to be done, Mr. Giorgi, before the walls are completed in the house; isn't that correct? A. Yes, that's right.

Q. And until that work is done, the walls cannot be completed? A. That's right.

TRIAL EXAMINER BELLMAN: What do you mean by completed, the lathing and plastering?

THE WITNESS: Yes, lathing and plastering. Before the lathing goes on, you have to get the electrical wiring in.

48

Q. (By Mr. Altieri) Must some work be done on the job before the roughing work by the electrical contractor can begin? A. Oh, yes.

Q. What must be done on the job before the electrical contractor is ready to step in and commence the roughing

of the electrical work? A. Well, your roughing for your home, the frame.

48 Q. I see. Now, after the roughing of the electrical work has been completed, the electrical contractor cannot continue with his job until the additional work you have told us about has been done, the plastering and the lathing. A. Yes, lathing and plastering.

Q. Now, on or about April 16, 1948, Mr. Langer had completed the roughing out of the electrical work, had he not? A. Yes.

Q. What happened, Mr. Giorgi, can you tell us, on or about April 16, 1948? A. Well, the carpenters were working on the job, and the—Samuel Langer, the electrical contractor, comes in and roughs his job, begins roughing.

Then I was notified a little while later—next day, or something to that effect—that the carpenters had walked off the job.

Q. Who notified you that the carpenters had walked off? A. The carpenter boss, Nicholas Deltoro.

Q. Did he tell you why the carpenters had walked off the job?

49 MR. SYME: I object to that unless that conversation was in the presence of the respondents. It is not binding upon them, not any talk between this gentleman and Deltoro.

TRIAL EXAMINER BELLMAN: Was Deltoro the subcontractor that you named?

THE WITNESS: Yes.

MR. SYME: This calls for a talk between this witness and Deltoro, the carpenter; isn't that right?

MR. ALTIERI: There isn't any question of hearsay here.

MR. SYME: You just asked him for such a talk. The question calls for what Deltoro said to him, and that was not in the presence of these respondents and, consequently, is not binding upon them.

TRIAL EXAMINER BELLMAN: Yes, I understand your position.

I will overrule the objection. The exception is automatic on that, too.

49 Q. (By Mr. Altieri) Did Deltoro tell you why the carpenters had walked off the job?

MR. SYME: I object to that, to his giving Deltoro's reasons.

MR. ALTIERI: I will withdraw the question.

Q. (By Mr. Altieri) Did you receive a telephone call from Mr. Deltoro? A. Yes. Q. What did Mr. Deltoro say to you?

MR. SYME: I object to that on the same grounds. It is a private conversation between this witness and Deltoro, not in the presence of the respondents.

TRIAL EXAMINER BELLMAN: Overruled.

A. Mr. Deltoro told me that his carpenters had walked
50 off the job because the electrical delegate had picketed the job. Q. Prior to this telephone call from Mr. Deltoro, had you spoken to the electrical delegate to whom you referred, about the occurrence on the job? A. No. Q. By the way, who was this electrical delegate that you referred to? A. I found out after that it was Patterson.

Q. That is the gentleman sitting at the counsel table? A. I don't know. I never saw him before. I don't know him.

Q. You had never seen him? A. No, Sir.

TRIAL EXAMINER BELLMAN: How many carpenters were on the job, anyway? 51

THE WITNESS: Two.

TRIAL EXAMINER BELLMAN: Two carpenters?

THE WITNESS: Two carpenters and the boss.

TRIAL EXAMINER BELLMAN: Was the boss Deltoro?

THE WITNESS: Yes. He helps around himself. He is a carpenter also.

Q. (By Mr. Altieri) Now, following the telephone call which you received from Mr. Deltoro, what happened? A. Well, he told me that the men were—

MR. SYME: I object to what Deltoro told him not in the presence of these respondents.

TRIAL EXAMINER BELLMAN: I will give you a standing objection, in so far as it concerns the discussion between this sub-contractor and the general contractor, such conversation as is now involved here. You may have a standing objection to that line.

THE WITNESS: Will you repeat the question?

Q. (By Mr. Altieri) Yes, surely. My question was, what did you do, if anything, after you received the telephone call from Mr. Deltoro? A. Well, I communicated with Samuel Langer.

Q. What did you say to him? A. And asked him—

MR. SYME: I object to any conversation between the 52
witness and Samuel Langer, the complainant in this proceeding, as not binding on the respondents, not being in their presence.

TRIAL EXAMINER BELLMAN: I will give you a

standing objection and you may have an automatic exception.

MR. SYME: Well, this is different. This conversation relates to a conversation—

TRIAL EXAMINER BELLMAN: I say that I am giving you a standing objection to conversations between this witness and Samuel Langer who, I understand, was the electrical sub-contractor. Is that correct?

THE WITNESS: Yes.

TRIAL EXAMINER BELLMAN: All right, proceed.

THE WITNESS: I communicated with Langer and told him what happened, so he decided—

MR. SYME: I object to what he decided.

TRIAL EXAMINER BELLMAN: Tell us what Langer told you.

THE WITNESS: We were going to get a union contractor to finish the balance of the job.

Q. (By Mr. Altieri) Did Samuel Langer release you from the contract? A. Verbally, yes.

Q. Did some electrical contractor other than Samuel Langer finish the job? A. Yes.

53 Q. That was after the plastering and lathing had been done? A. Yes.

Q. After Mr. Deltoro called you on the telephone, did you ever receive a telephone call from Mr. Patterson? A. Yes, I did.

Q. What did Mr. Patterson say to you, if anything? A. Mr. Patterson told me that Samuel Langer was unfair.

Q. Did he say anything else to you? A. And that I would have to replace Samuel Langer with a union contractor in order to complete the job.

Q. Did he say what would happen in the event you didn't replace Samuel Langer? A. I would probably not receive any skilled trades to finish the rest of the work.

Q. Is that what Mr. Patterson told you? A. That's right.

Q. And it was following the telephone call you had with Mr. Patterson, wasn't it, that you got in touch with Mr. Langer? A. Yes.

TRIAL EXAMINER BELLMAN: When did this telephone call with Patterson take place, in relation to April 16th?

THE WITNESS: After the carpenters had walked off the job.

TRIAL EXAMINER BELLMAN: After the carpenters left, you had a talk with Mr. Deltoro, as I recall your testimony? 54

THE WITNESS: Yes.

TRIAL EXAMINER BELLMAN: Now, did your conversation with Mr. Patterson come before or after your conversation with Deltoro?

THE WITNESS: After.

TRIAL EXAMINER BELLMAN: Then after you talked to Patterson, you talked to Langer?

THE WITNESS: Yes, then I called Langer.

TRIAL EXAMINER BELLMAN: And did this all take place on the 16th of April?

THE WITNESS: 16th or 17th, one of those two days.

TRIAL EXAMINER BELLMAN: Well, do you remember, for instance, whether you talked with Mr. Deltoro, as you have described to us, on the day that the carpenters left, the 16th, or the next day?

THE WITNESS: I talked to Deltoro the day the carpenters left, the 16th.

TRIAL EXAMINER BELLMAN: Did you talk to Patterson the same day?

THE WITNESS: The same night, the 16th.

TRIAL EXAMINER BELLMAN: When did you talk to Langer?

THE WITNESS: On the following day, the 17th, we straightened it out with Langer.

55 TRIAL EXAMINER BELLMAN: Now, did you secure a union or non-union electrical sub-contractor after Langer released you?

THE WITNESS: A union.

TRIAL EXAMINER BELLMAN: All right, proceed. I just wanted to get the sequence of events straightened out in my mind.

Q. (By Mr. Altieri) Now, you have testified, Mr. Giorgi, that you have been in the construction industry from 25 to 30 years; is that right? A. Yes.

Q. Is that your testimony? A. Yes, that's right.

Q. Are you familiar with the trade rules and trade union customs and practices of the construction industry in the Westchester County area? A. Yes, sir.

Q. Would construction workers, Mr. Giorgi, belonging to locals affiliated with the Westchester Building and Construction Trades Council be subject to fines or penalties if they continued to work on a job which had been declared unfair and which was picketed by any one of the locals belonging to the Trades Council?

MR. SYME: I object to that on the ground that is calls for a conclusion of the witness and it calls for hearsay

testimony, and it does not constitute the best evidence on the subject.

TRIAL EXAMINER BELLMAN: I will sustain the objection.

MR. ALTIERI: Mr. Examiner, I respectfully submit that by reason of his long years in the construction industry, this witness is competent as an expert to voice an opinion on the question that I have directed to him. 56

TRIAL EXAMINER BELLMAN: I think your question is broader than it needs to be in terms of the allegations of the complaint, and it does open up the witness to extensive cross-examination over matters that apparently are not in issue.

I think you can develop what is material in a more direct way.

MR. ALTIERI: I will try, sir.

Q. (By Mr. Altieri) Mr. Giorgi, is it a matter of common knowledge among employers and workers in the Westchester Building and Trades Council that if union workers on a construction job continue to work on a job that is being picketed and that has been declared unfair by any local that belongs to the Trades Council, that they will be disciplined and fined?

MR. SYME: I object to that on the same grounds mentioned in the previous objection.

TRIAL EXAMINER BELLMAN: Sustained.

MR. ALTIERI: May I respectfully ask if the Examiner is sustaining the objection to the question on the ground of immateriality?

MR. SYME: The Examiner does not have to give any reason for his rulings.

57 TRIAL EXAMINER BELLMAN: I don't know whether this witness is competent to testify as to common knowledge. It seems to me that you can go at the scope of this witness' knowledge more directly.

No, the general subject that you are approaching, as far as it pertains to certain allegations of the complaint, is not immaterial. It is just a question of getting this witness to testify about generalities, that is all.

MR. ALTIERI: I don't want to pursue the point unduly. I regard it as quite material to the theory of the case that we have.

TRIAL EXAMINER BELLMAN: I didn't rule that it is immaterial.

MR. ALTIERI: But I would like to make this suggestion, that the witness in question, is competent by reason of his long experience in the construction industry to voice an opinion on a matter of common knowledge among workers, of whom he has been a part for so many years, and that the only question is whether the fact of common knowledge is material to the allegations in the complaint, and I think if it is only on the question of relevancy, the General Counsel should be permitted to develop the point, subject to rejection later, if the Examiner reaches the conclusion that it is irrelevant. No harm is being done to anybody, then, by that procedure.

58 If the objection is sustained on the ground that it is remote, with respect to the issues, I strongly urge that it be given as much weight as you feel it should be given when the whole case is developed.

MR. SYME: Your Honor, I don't think this record should be cluttered up with a lot of immaterial testimony. There is a proper way to prove this, and if it is not proved properly, it should not be in the record at all.

TRIAL EXAMINER BELLMAN: I am not ruling on the general question of when and under what conditions workers cross picket lines. On the ground that you are asking for common knowledge, the objection is sustained. 58

Q. (By Mr. Altieri) Mr. Giorgi, do you know whether there is a commonly held belief or opinion among construction workers in the Westchester County area as to what would happen if they continued to work on a job that is being picketed or which has been declared unfair by one of the locals in the Council?

MR. SYME: I object to that on the same grounds as voiced in the last two objections.

TRIAL EXAMINER BELLMAN: Sustained.

If, after you have exhausted your possibilities on more specific types of evidence, you want to recall this witness and you claim that that is the only basis left for the testimony, I will hear you at that time; but I will not let you go into it until a more direct approach to the matter has been exhausted.

MR. ALTIERI: Will you excuse me for a moment, please? 59

TRIAL EXAMINER BELLMAN: Yes. Off the record.

(Discussion off the record.)

TRIAL EXAMINER BELLMAN: On the record.

Q. (By Mr. Altieri) By the way, Mr. Giorgi, in these 25 years that you have been in the construction industry, you have always been a member in good standing of your union? A. Yes, sir.

Q. And have you always worked among other union members? A. Yes.

Q. Have you, during the 25 years, have you always worked on jobs on which union men were employed? A. Yes.

Q. By union men, I mean union men belonging to one of the locals affiliated with the Westchester Building and Construction Trades Council.

Q. I take it that throughout these years, you have had numerous occasions to discuss with them union problems and labor problems generally? A. Well, not too many,
60 because I have been a boss practically all my 25 years.

Q. Have you, as a boss, had occasion to carry on discussions with union delegates and representatives throughout the 25 years? A. Occasionally, yes.

Q. You have done no other type of work except in the construction industry in that 25 years, have you, Mr. Giorgi? A. Yes, that's right.

MR. ALTIERI: That is all I have.

TRIAL EXAMINER BELLMAN: Do you want to continue now, or do you want to wait until after recess before you begin?

MR. SYME: I have only three or four questions.

TRIAL EXAMINER BELLMAN: All right, you may proceed.

CROSS-EXAMINATION

Q. (By Mr. Syme) What was the total amount of the contract you had with Langer on this job? A. $325.

Q. $325? A. Yes, $325.

Q. That included all the electrical work on that job? A. All the electrical work, complete.

Q. That house is located entirely in the State of Connecticut, isn't it? A. Yes.

Q. It is on the outskirts of the city or town of Greenwich, Connecticut? A. On the outskirts of the town of Greenwich.

Q. And all the work you did there, as far as Langer was concerned, was on that one house? A. That's right.

MR. SYME: That's all.

TRIAL EXAMINER BELLMAN: Did that include the total price of the job that Langer did and was to do?

THE WITNESS: That's right.

TRIAL EXAMINER BELLMAN: Do you have anything further?

MR. SYME: That's all.

TRIAL EXAMINER BELLMAN: How much of the total of $325 did he actually finish?

THE WITNESS: Of the $325, he finished, I would say, over—well, about sixty percent of it.

TRIAL EXAMINER BELLMAN: Did you pay him then for that sixty percent?

THE WITNESS: No, we came to a settlement. That was about all.

TRIAL EXAMINER BELLMAN: But you did settle it between you?

THE WITNESS: Yes, between us.

TRIAL EXAMINER BELLMAN: And he released you from the rest of the agreement?

THE WITNESS: That's right.

62 TRIAL EXAMINER BELLMAN: You mentioned getting materials that were used by the men who were your direct employees in the masonry work, and you got them from Mertz & Son, here in Port Chester?

THE WITNESS: Yes.

TRIAL EXAMINER BELLMAN: Do you recall the approximate value of these materials furnished for the work on this house in question?

THE WITNESS: On this house here, I would say about $1,800 worth of mason materials.

TRIAL EXAMINER BELLMAN: $1,800 worth of mason materials?

THE WITNESS: Yes.

TRIAL EXAMINER BELLMAN: That would include what kind of materials?

THE WITNESS: Concrete, concrete block, sand, cement, lime, rock, lath, wire lath, corner beads, flagstone and brick, flue pipe.

TRIAL EXAMINER BELLMAN: Are there any other questions of the witness?

MR. ALTIERI: No, Mr. Examiner.

Before the witness is excused, Mr. Examiner, I would like to say that this witness is here under subpoena. I

thought you made a suggestion before that you might reconsider the possibility of entertaining a line of questions such as you have refused to accept up to this point, at the conclusion of the case.

Will you, therefore, direct the witness to keep himself available in the event we wish to recall him?

TRIAL EXAMINER: BELLMAN: I will hear counsel for the General Counsel on the question of further questions of this witness along the line on which I sustained objections, and the witness is not excused in the sense that his subpoena is discharged; but he is excused temporarily, subject to recall before the close of the hearing. 63

Under those conditions, then, the witness is excused, subject to recall.

I want to be sure, first, that there are no other questions of the witness at this time.

There appear to be none, and the witness is excused, subject to recall.

(Witness excused).

TRIAL EXAMINER BELLMAN: We have gone about twenty minutes past the time that we originally set. Suppose we take an hour and a quarter for lunch.

There appear to be no objections to that, and the hearing is in recess until 2:20.

(Whereupon, at 1:05 p.m., a recess was taken until 2:20 p.m.)

AFTERNOON SESSION

(Whereupon, the hearing was resumed, pursuant to recess, at 2:20 p.m.)

TRIAL EXAMINER BELLMAN: The hearing will be in order.

MR. ALTIERI: Mr. Langer, will you take the stand?

SAMUEL LANGER

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a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Samuel Langer, 108 Purdy Avenue, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Mr. Langer, you are the charging party in this case? A. Yes, sir.

Q. What is the nature of your business? A. I do electrical contracting and maintenance work.

Q. How long have you been in that business? A. Since 1930, except for the time since—from 1940, when I was out of business, until 1944, when I went back in business again.

Q. Now, will you please describe for us briefly the exact nature of your business, just what you do in the course of your business? A. Well, we work on new construction, install electrical wiring for light and power in new homes, new buildings, commercial buildings, industrial plants; maintain the equipment in industrial plants; and oil burning equipment, gas-fired equipment, and so forth and so on.

Q. Part of your business, then, consists of doing the electrical wiring and installation of electrical fixtures and equipment in new construction work? A. Yes, sir.

Q. And part of your business consists, I believe you told us, in doing electrical repair and maintenance work in industrial plants? A. That's right. 65

Q. Now, would you please state for us the total dollar volume of the business transacted by you from July 1, 1947 to July 1, 1948? A. I have done work for a total value of $24,443.96.

Q. How much of that total represents work performed on construction jobs? A. Approximately — well, to be exact, $13,545.33.

Q. How much of the total of $24,443.96 represents work performed for manufacturing concerns, these industrial plants that you told us about before? A. $4,814.33.

Q. $4,814.33? A. Pardon me. Could I add something to that? 66

Q. Just a moment. Did you say $4,814.33? A. Yes, sir.

Q. Well, now, you have given us two figures, one for the work performed on construction jobs and another for the work done for manufacturing concerns, and the total amounts to something in excess of $18,000. Now, what does the balance between that figure and the figure of $24,443.96 represent? A. Work done on new stores, oil burner wiring, repairing in homes of—well, you know, shorted electrical equipment, the replacing of fixtures, property damage to electrical systems.

Q. Now, you have testified that $13,545.33, I believe, represents the work performed by you on construction jobs. Can you tell us the approximate total cost of the construc-

tion jobs on which you performed work? A. About $2,700.

MR. SYME: May I have that question and answer?

TRIAL EXAMINER BELLMAN: Read the question and answer, please.

(Last question and answer were read by the reporter.)

Q. (By Mr. Altieri) Did you understand that question, Mr. Langer? A. No, I didn't.

Q. Now, the reporter has read it back. Perhaps I can rephrase it.

Can you tell us the approximate total building cost of all the jobs on which you appeared and did the electrical work?

67 MR. SYME: I object to that as immaterial. That takes in all kinds of jobs that this man has done anywhere in the world. We object to that as immaterial, as far as this case is concerned.

TRIAL EXAMINER BELLMAN: The objection is overruled.

A. The total cost of the construction jobs is about $650,000.

Q. (By Mr. Altieri) Can you tell us how you arrived at that figure, Mr. Langer? A. Yes. Materials figured—

Q. We aren't speaking of materials now, Mr. Langer. The figure you gave us, as I understand it, was the total cost of the construction, of what it cost to construct the various jobs on which you did the electrical work? A. That's right.

Q. Now we are asking you to explain, if you can, how you arrived at your estimate of $650,000. A. Well, it is commonly known in the electrical contracting trade that the electrical work runs approximately two percent of the total

value of the construction of the buildings, or whatever work is going on.

MR. SYME: I move to strike out the answer on the ground that it is based on hearsay.

TRIAL EXAMINER BELLMAN: I will deny the motion to strike.. 68

Q. (By Mr. Altieri) Can you tell us how much of your estimated figure of $650,000 represents the cost of material installed on the job?

MR. SYME: I object to that on the ground that it calls for a conclusion and is based on hearsay and asks for hearsay testimony.

MR. ALTIERI: I am asking the witness to tell us, if he can.

TRIAL EXAMINER BELLMAN: Read the question.

(Last question read.)

TRIAL EXAMINER BELLMAN: The question is, "Can you tell us?" He may answer.

Q. (By Mr. Altieri) Just answer yes or no. A. Yes.

Q. Now, will you tell us how much of that estimated figure of $650,000 represents the cost of material installed on these jobs?

MR. SYME: I object to that on the ground that it calls for a conclusion of the witness, and is based on hearsay.

TRIAL EXAMINER BELLMAN: Lay a foundation for the basis of the witness' estimate.

I will sustain the objection.

Q. (By Mr. Altieri) How long have you been doing electrical contracting work, Mr. Langer? A. Since 1930.

Q. And since 1930 you have been engaged in preparing
69 estimates for electrical work on construction jobs, have you not? A. Yes, sir.

Q. In preparing these estimates for the cost of electrical work on construction jobs, have you had occasion to know the total cost of the jobs for which you have prepared these estimates? A. Approximately so, yes.

Q. In preparing these estimates for the electrical contracts on these construction jobs, have you had occasion to estimate and become familiar with the amount of material that was to be installed on these jobs, in toto? A. Yes.

MR. SYME: Installed by whom?

MR. ALTIERI: I said, "in toto."

Q. (By Mr. Altieri) Will you tell us now how much of your estimated figure of $650,000 represents the cost of material, the approximate cost of material, installed on these jobs?

MR. SYME: I object to that as calling for a conclusion of the witness, and based on hearsay evidence.

TRIAL EXAMINER BELLMAN: I will overrule the
70 objection.

A. In my estimation, the materials for the construction of the $650,000 worth of contracts would run to $260,000.

MR. SYME: I move to strike out the answer on the ground that the witness is not qualified to answer. That calls for hearsay testimony and it involves an opinion of the witness.

TRIAL EXAMINER BELLMAN: I will deny the motion to strike.

Q. (By Mr. Altieri) Now, going back to your total volume of business for the past year, Mr. Langer, does any

portion of the sum of $24,443.96 represent work performed outside the State of New York? A. Yes, sir.

Q. How much of that total represents such work? A. $8,402.50.

Q. What kind of materials, Mr. Langer, do you purchase and install in connection with your work? A. Electrical wire of all kinds, B-X cable, electrical conduit, fittings for the conduit, fittings for the B-X cable, outlet boxes, plugs, plates, switch plates, lighting fixtures, motors, fans, blowers, and so forth.

Q. How much material did you purchase from July 1, 1947 to July 1, 1948? A. $8,095.66.

Q. Where was this material delivered? A. To my 71
shop, 108 Purdy Avenue, Port Chester, New York.

Q. Was any part of this material purchased from concerns outside the State of New York? A. Yes, sir.

Q. Can you tell us how much of this material was purchased from concerns outside the State of New York? A. $5,095.66.

Q. Have you testified, Mr. Langer, that this material was delivered to your place of business in New York? A. Yes.

Q. Now, of the figure you have given us as the total volume of business for the past year which, as I recall it, was $24,443.96, does any part of that figure represent payment for work performed outside the State of New York? A. Yes.

Q. How much of that figure represents work performed outside the State of New York? A. $8,402.52.

Q. Where was the work performed for which this sum was received? A. In Connecticut.

Q. In performing work on these jobs in Connecticut, did you have occasion to transport material from your place

of business in New York to the job sites? A. Oh, yes.

Q. Can you tell us how much, in dollar volume, if you can, approximately, of the material you transported from
72 your place of business in New York to the job sites in Connecticut, when you performed work in Connecticut? A. $2,700.

Q. How did you arrive at that figure of $2,700? Is that an exact figure, Mr. Langer? A. Well, yes, it is an exact figure, and the material is always figured by me when I estimate a job at about one-third of the cost of the contract.

Q. Well, what I am trying to find out is this: Is the $2,700 an estimated figure based on some consideration such as one-third of the contract, or does that purport to be the exact amount? A. No, it is an estimated amount.

Q. Now, you testified, Mr. Langer, that you started business in 1930; is that correct? A. That's right.

Q. And you continued in business until some time in 1940? A. That's right.

Q. And then you went out of business? A. Yes, sir.

Q. When in 1940 did you go out of business? A. In October of 1940.

Q. When did you resume business? A. 1944, October, 1944.

Q. Now, very briefly only, what did you do in that interval from October, 1940, to October, 1944? A. In 1940,
73 I went to Washington, Washington, D. C., and I got a job down there and worked on construction, and from there I went to Bayonne, New Jersey, and worked on naval construction, and then I was taken into the Armed Forces in 1942, and I remained in the Armed Forces until 1943, and from when I got out, in 1943, I went down into the electrical construction of ships, down in Baltimore, Maryland, and I came back and went in business again.

Q. You were not in business for yourself in this interval from October, 1940 to 1944? A. No, sir.

Q. Now, in the period from 1930 to 1940, did you operate as a union shop? A. No, sir.

Q. You didn't have a contract with Local 501 or any other union organization? A. No, sir.

Q. After you resumed business, in October, 1944, did you have a conversation with William Patterson, the business representative of Local 501, about your business? A. Yes.

Q. When did that conversation take place? A. About October, 1944.

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Q. The same month as the month in which you resumed business? A. Yes, sir.

Q. Will you give us the substance of that conversation, what you said to him and what he said to you?

MR. SYME: Just a moment. I object to that upon the ground that the conversation now called for transpired prior to the enactment of the Taft-Hartley Law or the Labor-Management Act of 1947, and that anything that transpired prior to June 23, 1947, the effective date of the Taft-Hartley Act, is incompetent in these proceedings, because what occurred prior to June 23, 1947, was unquestionably a legal procedure on the part of these respondents.

TRIAL EXAMINER: What is your purpose in developing this line of testimony?

MR. ALTIERI: As background, to cast light on the exact nature of the dispute between this contractor and the union, all of which events cannot be fully understood without this background.

MR. SYME: If your Honor please, prior to the Taft-Hartley Act, all of these acts were perfectly legal, even boy-

cotting and picketing. Anything like that was unquestionably legal prior to the enactment of the Taft-Hartley Act.

They are going back to 1944, three years before the Act was enacted, and they are complaining that we broke the Taft-Hartley Act, and we couldn't break before it was in existence. Consequently, any acts before the enactment of the Taft-Hartley Act are incompetent.

TRIAL EXAMINER BELLMAN: As I understand your contention it is that this conversation constituted a violation?

M. ALTIERI: No, sir, no, sir. This is background.

75 TRIAL EXAMINER BELLMAN: I will overrule the objection.

MR. SYME: Well, if it didn't constitute a violation, it is certainly incompetent. All they can prove here is a violation, but they must prove the violation with competent proof. They are now going back to a time when we had a perfect right to negotiate with this complainant, and we had the right to boycott him and picket him. They are now trying to bring in acts which were legally performed to show a violation of the Taf.-Hartley Act, and therefore any such proof must necessarily be incompetent.

TRIAL EXAMINER BELLMAN: The bearing of this evidence and any weight to be given to it will have, of course, to be determined in the light of the entire record.

Proceed.

Would you read the question, please?

(The pending question was read by the reporter.)

A. I took a job in White Plains, in a men's shop, and I was working there alone, and in the course of my working

there, Mr. Patterson came in and introduced himself as the delegate of the union, and he asked me why I didn't sign an agreement with Local 501 to employ union men.

So I said that I will be agreeable to that, and I also asked about the men, I asked him about the men that worked for me before the war, that were overseas, and that they had written me a letter asking me to give them their old jobs back if I went back in business.

He said, "If they are good mechanics, we will be glad to take them in."

I said that I would be agreeable to sign, and he said, "O. K., I will see you in the near future."

Q. (By Mr. Altieri) Subsequent to this conversation, did you enter into a contract with Local 501 of the IBEW?

MR. SYME: May we have a date fixed?

TRIAL EXAMINER BELLMAN: I believe the question asked whether he entered into it subsequently, subsequent 76
to that conversation.

MR. SYME: I understand that, but if he entered into it prior to the effective date of the Taft-Hartley Act, I desire to make an objection.

I would like to know when. I am entitled to know that so that I can properly phrase my objection.

TRIAL EXAMINER BELLMAN: I will overrule your objection at this point and let the witness testify whether he entered into a contract, and then the date can be fixed.

MR. SYME: Then I object on the ground that it does not fix a date and does not show whether the transaction occurred before or after the effective date of the Taft-Hartley Act.

77 TRIAL EXAMINER BELLMAN: I will overrule your objection.

The question is, did you enter into a contract?

THE WITNESS: After this talk?

Q. (By Mr. Altieri) Yes. A. Yes.

Q. When did you enter into this contract? A. October, 1944.

Q. And this contract required you to conduct your operations as a union employer, didn't it?

MR. SYME: I object to that as—

MR. ALTIERI: All right, I will withdraw it.

Q. (By Mr. Altieri) Was Dominick Carlucci employed by you during any part of the period from 1930 to 1940? A. Yes, sir, he was employed by me since two weeks after I started in business, until the day I closed up to go away in 1940.

Q. Was Joseph D. Vitti employed by you during any part of the period from 1930 to 1940? A. Yes, for a couple of years prior to 1940.

Q. Were these the men to whom you referred in your conversation with Mr. Patterson, which you mentioned before? A. Yes.

Q. Are these men working for you now, Mr. Langer? A. Yes.

Q. Now, after you went into business again in October, 1944, when did Joseph D. Vitti apply for his job back? A. In October, in 1945.

Q. And did you give him his job back? A. Sure.

Q. Did you say anything to him at that time? A. Yes.

Q. What did you say to him?

MR. SYME: I object to that as not binding on the respondents, a conversation held between this man and one of his employees. 78

TRIAL EXAMINER BELLMAN: I will overrule the objection.

A. I told Joe that I had an agreement with Local 501 to be a union shop, and he had to go down to the Local and be authorized or be given permission by the Local to go to work for me.

Q. And do you know whether Vitti tried to join Local 501? A. Yes—

MR. SYME: I object to that as calling for a conclusion of the witness and involving hearsay testimony. It is not binding on these respondents.

TRIAL EXAMINER BELLMAN: Is this individual going to be called as a witness? 79

MR. ALTIERI: Yes.

TRIAL EXAMINER BELLMAN: I will sustain the objection.

Q. (By Mr. Altieri) Did Local 501 at that time give you permission to hire Vitti, Mr. Langer? A. Well, Local 501, after I made a number of calls—

MR. SYME: I object to this. The question calls for a yes or no answer.

Q. (By Mr. Altieri) Will you answer that question yes or no, if you can? A. Yes.

TRIAL EXAMINER BELLMAN: Now, this is as to what individual?

MR. ALTIERI: Vitti, V-i-t-t-i.

Q. (By Mr. Altieri) Was Vitti a member of the union when you re-hired him, Mr. Langer? A. No, sir.

Q. Were union men available for hiring at that time? A. No.

Q. And did the union express any objection to you about re-hiring Vitti at that time? A. No.

Q. Now, after you resumed business, in October of 1944, did Dominick Carlucci apply for his job back? A. Yes.

Q. When? A. In January of 1946.

Q. Will you tell us the circumstances of his applying for his job back, and what you did about it?

MR. SYME: We object to that on the ground that it occurred prior to June 23, 1947, prior to the time the Taft-
80 Hartley Act became effective, and therefore it is incompetent as far as this proceeding is concerned.

TRIAL EXAMINER BELLMAN: I will overrule the objection.

A. Dominick came back in—Dominick came down to see me in January, 1946, and asked me—

MR. SYME: I object to any conversation between this man and Carlucci or Vitti, any conversation not in the presence of the respondents.

TRIAL EXAMINER BELLMAN: I will overrule the objection.

A. (continued) Dominick came down to see me in January, 1946 and asked me if I could give him his job back, and I told him at that time that I was affiliated with Local 501, and he should go down to the Local's office, in Mt. Vernon, and affiliate himself with Local 501, and he could have his job back with pleasure.

Q. (By Mr. Altieri) Did you at any time thereafter rehire Carlucci? A. Yes.

Q. When? A. July 27, 1946.

Q. Was Carlucci a member of the union at that time? A. No.

Q. And did the union express any objection to you at that time about hiring Carlucci? A. No.

Q. Were union men available for employment by you at that time, at the time you hired, re-hired Carlucci? A. No.

Q. Have Carlucci and Vitti remained in your employ since being re-hired on the respective dates you have testified to? A. Yes, except for two weeks, when I laid them off.

Q. When did you lay them off? A. In May, 1947.

Q. Will you tell us why you laid them off?

MR. SYME: I object to that as immaterial.

TRIAL EXAMINER BELLMAN: What bearing does that have? 81

MR. ALTIERI: All right, sir, I will withdraw the question.

Q. (By Mr. Altieri) Will you describe for us the circumstances under which you laid off these two men?

MR. SYME: I object to it as immaterial.

MR. ALTIERI: You can't tell whether it is immaterial or not until the witness answers.

MR. SYME: I object to the question as immaterial.

TRIAL EXAMINER BELLMAN: I will ask you to indicate the general nature of its materiality.

MR. ALTIERI: The testimony which it is anticipated such question will elicit will demonstrate that the union requested the dismissal of these men, and certain things happened thereafter, all of which casts light on and is an

integral part of the dispute between the union and the charging party which led to the bringing of the charges in this case.

To make the record complete, this is as material as any of the other information which we have developed up to this point.

82 TRIAL EXAMINER BELLMAN: I will overrule the objection.

Q. (By Mr. Altieri) Will you answer the question? A. What is the question, please?

TRIAL EXAMINER BELLMAN: Read the pending question.

(Pending question was read by the reporter.)

A. In May of 1947, Mr. Patterson left a note under the door of my shop, which stated that I was to lay off all permit men in my employ.

MR. SYME: All what?

THE WITNESS: My permit men, all permit men in my employ.

So that would work undue hardship on me, and I went down to the local office myself, because it was during the telephone strike, and I couldn't call them on the telephone, and I went down and I talked to Mr. Stauder, and I told him—

83 TRIAL EXAMINER BELLMAN: Who is this Mr. Stauder?

THE WITNESS: Mr. Stauder was one of the business representatives of Local 501 in the office.

MR. ALTIERI: Excuse me.

Mr. Examiner, Mr. Stauder happens to be in the courtroom, and I wonder whether he would mind telling us his office—

TRIAL EXAMINER BELLMAN: Just a moment, just a minute. Off the record.

(Discussion off the record.)

TRIAL EXAMINER BELLMAN: On the record.

MR. ALTIERI: Mr. Syme, may we stipulate that Louis Stauder was one of the assistant business managers or agents of Local 501 at the time that Mr. Langer is testifying about, namely, May, 1947?

MR. SYME: Yes, I will stipulate that.

Q. (By Mr. Altieri) All right, Mr. Langer, continue with your story. A. So I expressed my hardship of laying off all my permit men to Mr. Stauder, and I finally got him to agree to allow me to keep George Hospodar, which was one of the men the union had sent me and didn't have a card. He had a permit—allowed him to remain in my employ, because I was doing a large job in Connecticut. They allowed me to keep Hospodar, and they sent me two card men, one named Ray Baker and the other Sal Massinelli,

Q. Let me interrupt you for a moment, Mr. Langer. When they sent you these men, had you fired Vitti and Carlucci? 84

A. Yes, that was the understanding.

Q. And you hired two men that were sent to you in their stead by the union? A. That's right.

Q. How long did these two union men remain in your employ? A. Well, I kept Baker for two days, and Massinelli took sick the first day he worked for me, and I kept

his job open for a week, and then he returned, and I kept him for four days.

Q. And was the employment of these two union members with you terminated at that time? A. Yes, sir.

Q. And then you he-hired Carlucci and Vitti; is that correct? A. That's right.

Q. And have they been in your employ ever since? A. Yes.

TRIAL EXAMINER BELLMAN: Let me ask you this: At the time you re-hired these other two men, did you secure approval of the union before you re-hired them?

THE WITNESS: No, sir.

85

TRIAL EXAMINER BELLMAN: Proceed.

Q. (By Mr. Altieri) Was that the start of your dispute with Local 501? A. Yes, sir.

MR. SYME: I object to that as calling for a conclusion. That is a matter to be determined by the Examiner.

TRIAL EXAMINER BELLMAN: I will sustain the objection to the question phrased in that fashion, and I will strike the witness's answer, which I think was in the record.

Q. (By Mr. Altieri) Did you thereafter get a contract to do some electrical work on the Big Dollar Market in Portchester, Connecticut? A. Yes, sir.

MR. SYME: Just a moment. I move to strike the answer, so that I may interpose an objection.

TRIAL EXAMINER BELLMAN: All right, I will strike the answer. Make your objection.

MR. SYME: I object to the form of that question as incompetent and immaterial.

TRIAL EXAMINER BELLMAN: Read the question.

(Question read by the reporter.)

TRIAL EXAMINER BELLMAN: Reframe your question.

MR. ALTIERI: That should have been Portchester, New York. I meant Portchester, New York.

Q. (By Mr. Altieri) Did you thereafter get a contract to do the electrical work on the Big Dollar Market, in Port Chester, New York?

TRIAL EXAMINER BELLMAN: Is the term, "Big Dollar Market" the name of the market, or does the word "Big" characterize the size? 86

MR. ALTIERI: It is the name. It is called Big Dollar Market.

MR. SYME: I object to that as applying to a job not pleaded in the complaint.

TRIAL EXAMINER BELLMAN: Is this part of the background of the labor dispute?

MR. ALTIERI: Yes, sir.

TRIAL EXAMINER BELLMAN: Not pleaded as an unfair labor practice in the complaint?

MR. ALTIERI: Well, it is background material.

TRIAL EXAMINER BELLMAN: I will overrule the objection.

Answer the question.

A. Yes.

Q. (By Mr. Altieri) When did you obtain this contract? A. In the summer of 1947.

Q. Can you fix the month for us? A. Yes, sir, in June.

MR. SYME: Did you say June?

THE WITNESS: June.

Q. (By Mr. Altieri) Did you commence work on this contract—

87 MR. SYME: Just a moment, please. We object to that on the ground that up to June 23, 1947, these respondents had the right to deal with this witness. Unless it is shown that such transaction occurred after June 23rd, it is incompetent.

TRIAL EXAMINER BELLMAN: I will give you a standing objection to that line of questioning.

I will overrule the objection.

THE WITNESS: Will you repeat the question?

Q. (By Mr. Altieri) Did you commence work on that contract? A. Yes.

Q. Tell us what happened after you commenced working on the contract? A. We were working on this job for about two and a half days when Mr. Harris Beck, carpenter delegate from Port Chester, New York, walked in and looked around and said, "Langer, you better call up Patterson. I think you got some trouble with him."

I immediately went out to the pay station and called up Mt. Vernon, but Mr. Patterson wasn't there.

The next day my men went back to the job—

Q. Who were these men that were working on this job? A. George Hospodar, Dominick Carlucci and Joseph Vitti. My men went back to the job the next day, and I was out of town, but I came back to the job late in the afternoon, and I was accosted by the attorney for the owner of the market, and he said, "What are you trying to do here, Sam? You have trouble with the union."

MR. SYME: We object to any conversation between the owner of the building and this witness as not binding upon the respondents. 88

TRIAL EXAMINER BELLMAN: Is this all background on the nature of the dispute?

Q. (By Mr. Altieri) Don't tell us of any conversation between you and the owner. You had a conversation with the representative of the owner of the building; is that correct? A. That's right.

Q. Following that conversation, were you able to complete your contract on that job? A. No.

Q. Did you, shortly after, that is, shortly after losing the Big Dollar Market job, get a letter from Patterson? A. Yes.

MR. SYME: I object to the form of the question, "losing the contract." There is no proof that he lost the contract.

TRIAL EXAMINER BELLMAN: Reframe the question.

MR. ALTIERI: I will withdraw the question.

TRIAL EXAMINER BELLMAN: All right, the question is withdrawn.

Q. (By Mr. Altieri) Did you, shortly after these occurrences which you have just testified to, get a letter from Patterson? A. I got a letter from the Trade Board, which Patterson is a member of, to appear at ten o'clock in the morning in June, one day in June there—I don't know the date—and I got the letter at two o'clock in the afternoon mail, so I couldn't appear that particular morning.

Q. When you speak of June, do you mean June, 1947? A. That's right.

Q. You referred to the Trade Board. Can you tell us what the Trade Board is? A. The Trade Board is a
89 body of men made up of members of the Electrical Contractors Association and the Union Executive Board members, a committee appointed by the union or so, that decides on the procedure of work—well, on contracts between the Trade Board—I mean between the Contractors Association and the union.

Q. Now, did you, in August of 1947, attend a meeting of the Trade Board? A. Yes.

Q. Was Mr. Patterson present at that meeting? A. Yes.

90 Q. Will you tell us what happened at that meeting? A. I entered the meeting and was asked a question by the Chairman of the Trade Board. I don't know his name. He was an electrical contractor at that time. And he asked me what I wanted, and I said, "I came down to find out if I have a contract with the union or not."

He said no, that I didn't have a contract with the union, and then he said, "What else do you want?"

So I said that I would like to know whether I couldn't sign up my shop and have the men have an agreement with the union, and he told me that the—that under the Taft-Hartley Act, they couldn't sign any more closed shop agreements, and at present they haven't because their old contracts have a long time to go yet, and they aren't signing any union shop agreements, so they couldn't help me out. So I told them that I could do any job that come along in that case, and Mr. Patterson, at the end of the room, said, "Our men won't work with you."

So I said, "Your men won't work with me, because my men are doing the job," and then I walked right out.

TRIAL EXAMINER BELLMAN: Do you know the approximate date in August of this conversation?

THE WITNESS: No, sir.

TRIAL EXAMINER BELLMAN: Proceed.

Q. (By Mr. Altieri) Now, Mr. Langer, did you, on or about March 16, 1948, enter into a contract with the Giorgi Construction Company for the electrical work on a private house to be erected at Ridge Street at Douglas Drive in the town of Greenwich, Connecticut? A. Yes, sir.

Q. What was the amount of your contract? A. $325.

91

Q. Did you thereafter commence work under that contract? A. I did.

Q. What part of the work did you do under this contract? A. We put in all the roughing.

Q. Was the roughing work completed on or before April 16, 1948, Mr. Langer, do you know? A. Yes, the roughing work was all completed and approved by the inspector from the Electrical Department in Greenwich, Connecticut.

Q. Whom did you employ on this job? A. Carlucci and Vitti.

Q. Now, will you tell us exactly what happened after you completed the roughing work? A. Louis Giorgi called me up on the telephone and told me—

MR. SYME: I object to any conversation between this witness and Giorgi as not binding on the respondents.

TRIAL EXAMINER BELLMAN: Overruled.

A. Louis Giorgi called me and told me that I would have to get off the job, because he had some trouble with the electrical delegate picketing the job, and he wanted to finish the job and get his money, and all the other men, too.

92 I said, "All right, Louis, I will get off the job and get hold of Hy-Power Electrical, and they will take over the job. You make another contract with him, and he will take over the job, and I will step out."

Q. Was there any picketing done on the job while you and your men were working there, Mr. Langer? A. No, sir.

Q. And it was the Hy-Power Electric Company that finished the job, not you? A. That's right.

MR. ALTIERI: May we have a recess for a few minutes, Mr. Bellman?

TRIAL EXAMINER BELLMAN: The hearing will be in recess for five minutes.

(Short recess.)

TRIAL EXAMINER BELLMAN: The hearing will be in order.

Q. (By Mr. Altieri) Mr. Langer, prior to going into business for yourself in 1930, were you employed anywhere? A. Yes.

Q. In what capacity were you employed? A. Electrician, repair man.

Q. How long prior to 1930 were you so employed? A. I got out of school in 1927, about, I would say. It was about two years, I guess.

Q. Did you do any work in construction jobs in that two-year period? A. Yes.

Q. So that for a period dating back approximately two years prior to 1930, up to the present time, you have been engaged either as an employer or as an employee in doing electrical work on construction jobs; is that right? A. That's right.

TRIAL EXAMINER BELLMAN: The witness has 93
testified already to a period of several years when he was not doing that sort of work.

MR. ALTIERI: Yes, sir, that's right, the period of 1940 to 1944, yes, sir.

Q. (By Mr. Altieri) With the exception of that period from 1940 to 1944, Mr. Langer, you have been engaged either as an employer or as an employee in doing electrical work on construction jobs; is that right? A. That's right.

Q. Did you do any work on construction in the interval from October, 1940 to October, 1944? A. Yes.

Q. And in that interval from October, 1940, to October, 1944, you became a member of some local in the International Brotherhood of Electrical Workers, did you not? A. That's right.

Q. What local was that? A. 646.

Q. Where is that local located? A. Covington, Virginia.

Q. Are you familiar, Mr. Langer, with union customs and practices in the construction industry? A. Yes.

Q. In Westchester County? A. Yes.

Q. Do you know whether union members belonging to 94
one union, belonging to the Building and Construction Trades Council of Westchester County, are required to walk off a job which is picketed and declared unfair by a different union belonging to the same Trades Council?

MR. SYME: I object to the form of that question as calling for a conclusion of the witness, and on the further ground that the witness is not qualified to answer, and on the further ground that it involves hearsay. In other words, I make the same objection that I made when the

previous witness was being interrogated on the same subject, and to which line your Honor sustained the objection.

TRIAL EXAMINER BELLMAN: I will sustain the objection.

MR. ALTIERI: Now, I will ask you to reconsider that, Mr. Examiner. Here is a man who has been in the construction industry, in one form or another, for twenty years or more, and he has testified—and this is a matter for the respondents to cross-examine on to their heart's content, if they like—but he has testified that he is familiar with union customs and practices in the industry. Now he is asked whether he knows, whether he has knowledge, with respect to a stated union practice that we question him about, and the objection is made to that.

Mr. Examiner, I submit that he should be permitted to answer. I don't know what weight you will give this ultimately, and I don't know what value that testimony is going to have in the face of the entire record as it will finally
95 stand, but I respectfully submit that he ought to be allowed to answer.

MR. SYME: He respectfully submits that this man should be allowed to answer and he respectfully submitted that the previous man ought to be allowed to answer.

Well, this man never belonged to a union in Westchester County. He was in a union in Covington. There is nothing to show that the Westchester Trades Council has anything to do with this whatsoever.

MR. ALTIERI: May I ask the witness one question before you finally consider the point and rule on it?

TRIAL EXAMINER BELLMAN: You may.

Q. (By Mr. Altieri) Outside the period from October,

1940 to October, 1944, where have you been engaged in business, Mr. Langer? A. In Port Chester, New York.

Q. Has your work all been in the area of Westchester County and its immediately surrounding area? A. Yes, sir.

MR. ALTIERI: I renew the question, with your permission, that was asked a while ago and concerning which we have had some discussion here. 96

MR. SYME: I renew my objection, the objection I made when you sustained the previous objection, and I make the same objection now. If it wasn't competent for somebody else to testify to hearsay, it is not competent for this man to testify to hearsay.

There is nothing to show that this man knows about the Westchester County Council.

They are asking for an order in Westchester. There is nothing to show that this man knows anything about the Westchester County Council.

MR. ALTIERI: Fundamentally, all knowledge involves a measure of conclusion and opinion, but in all my experience, I don't know of anybody—assuming the relevancy of the practice to the issues before the Court—I don't know of anybody who has been denied the opportunity to testify as to what his knowledge is.

TRIAL EXAMINER BELLMAN: Will you state your question again, please?

MR. ALTIERI: May I, with your permission, have the question read back?

TRIAL EXAMINER BELLMAN: Read the question.

MR. SYME: Well, I made two separate objections to these questions being asked now. When he first asked the

question, I objected, and he reframed the question, and I made the objection again. I urge both of my objections.

TRIAL EXAMINER BELLMAN: Well, I have sustained objections to the question.

I will now ask you to state a question, in view of all the argument.

MR. ALTIERI: May I be very careful in framing the question, in view of the entire theory on which this case is to be made? May I have a few minutes in order to frame that question correctly?

TRIAL EXAMINER BELLMAN: All right, I will give you a few minutes' recess.

(Short recess.)

97 TRIAL EXAMINER BELLMAN: The hearing will be in order.

Q. (By Mr. Altieri) Mr. Langer, do you know whether, under existing union customs and practices in the construction industry, union members in building trades are required by their unions to cease working when the job is picketed and declared unfair by one of the local unions of the Building Trades Council?

MR. SYME: I object to that on the ground that the proper foundation has not been laid. There is nothing to show that this witness is familiar with the practices in Westchester County, and that question calls for hearsay testimony and calls for a conclusion of the witness; and is therefore incompetent.

TRIAL EXAMINER BELLMAN: Will you read the question, please?

(Question read.)

MR. SYME: There is no proof to show or establish the existence of any such custom or use.

This is in Westchester County, not in Connecticut.

TRIAL EXAMINER BELLMAN: Well, I don't believe the question states a place.

Will you read the question again to counsel and will you see, Mr. Altieri, if it is exactly as you want to propound it?

(Question re-read.)

TRIAL EXAMINER BELLMAN: I will sustain the objection to the question in its present form. I don't believe it is limited enough to be within the discussion previously bearing on this question and on this witness' testimony. 98

MR. ALTIERI: With your permission, I would like to reframe the question further.

Q. (By Mr. Altieri) Mr. Langer, do you know whether, under existing union customs and practices in the construction industry, union members in the building trades are required by their unions to cease working when the job is picketed and declared unfair by one of the locals in the area in which you have operated and concerning which you have testified, namely, the area of Westchester County and vicinity, that belong to the Building Trades Council for that area or that vicinity?

MR. SYME: That doesn't relate to the State of Connecticut. That is in Westchester County, which is an entirely different state.

They aren't asking this man for his knowledge of what existed in the State of Connecticut. They are talking about an entirely different state.

There is nothing to show, your Honor, that this man is familiar with it, because he has never belonged to any union

either in Westchester County or in Connecticut, as far as the proof here is concerned.

MR. ALTIERI: The testimony will show that the Locals in this case are locals affiliated with the Westchester Building and Construction Trades Council, and it is because of that affiliation that the consequences of walking off the job attached. That is the theory of the case.

99 As far as the testimony of this individual is concerned, defining and limiting the question, in my mind there is no question at all here.

100 MR. SYME: Unfortunately, your opinion is not what is going to control His Honor's ruling.

MR. ALTIERI: I hope it will.

MR. SYME: Well, you are very persuasive, but up to date you haven't been successful.

Now, he is asking this man about his knowledge of customs and practices relating to the County of Westchester, in the State of New York, and there is no proof whatsoever that this man ever belonged to any union whatsoever either in Westchester County or in the State of Connecticut. Consequently his answer must be based on hearsay and conclusion.

It is the same question to which your Honor sustained an objection before the recess.

TRIAL EXAMINER BELLMAN: It is on the same general line.

I am inclined to my former ruling, at least until the picture is more fully developed, at least until the picture of the unions and the locals involved is shown more clearly.

I think the best procedure would be to give you the right to recall the witness on this kind of question if the proof,

before the end of the taking of evidence, does not reveal matters of this general type by more direct evidence.

MR. ALTIERI: Mr. Examiner, the allegation in the complaint that the members of the Carpenters' Local that walked off the job were members of Local 543 of the United 101
Brotherhood of Carpenters and Joiners of America—that is the allegation in the complaint—and that this local was a local affiliated with the Westchester Building and Construction Trades Council, to which Local 501 of the IBEW also belonged, and in which Mr. Patterson, the respondent here, was a trustee. Those are the allegations in the complaint, and all those allegations remain admitted on the present state of the pleadings; and as far as the type of background that Mr. Syme suggests is necessary before this witness is permitted to testify, we have it right there. We have the fact that the employees who the complaint charges walked off the job as a result of the alleged unfair labor practice on the part of this union belonged to a local which is affiliated with the same Building Trades Council to which Local 501 belongs.

TRIAL EXAMINER BELLMAN: You are contending that that background, then, is in the record by virtue of allegations in the complaint that are not contested in the answer.

MR. ALTIERI: I suggest that it is sufficiently in the record up to this point to meet Mr. Syme's objection.

MR. SYME: The objection I urge is that this man is not competent to testify to what went on in the Westchester Building Trades Council, because he was never a member of it. The question calls for his conclusion and for hearsay.

You can't establish custom and practice in such a manner by a person who is not familiar with the custom and practice—if it really does exist in fact.

MR. ALTERI: But he has testified that he is familiar with the practices.

102 MR. SYME: His saying so doesn't make it so.

The record fails to show that he has had any connection with any labor organization in Westchester, or with the Westchester Building Trades Council.

TRIAL EXAMINER BELLMAN: Are you advancing the witness as an expert on these matters, or on the ground that this witness has been in a position in which he might have known about these matters?

MR. ALTIERI: I am advancing the witness as a sufficiently expert person by reason of his experience and background to explain—in connection with the additional basis laid by the direct testimony—that he is familiar with the practices, sufficiently familiar to furnish a basis for the type of questions asked.

I submit that a proper foundation has been laid.

MR. SYME: There is no proof that this man has had any contact with any of these labor organizations. How can he testify to a practice which, if it exists at all, exists in an organization that he was never connected with? If he was a member or an officer of the organization, it would be different; but here is an outsider being called on to express his opinion as to a practice or custom in an organization with which he has never had the slightest connection or dealing.

MR. ALTIERI: I respectfully submit that the Trial Examiner can take judicial notice of the fact that a person who has been in the same industry for over twenty years as employer and employee must have acquired sufficient knowledge to enable him to testify with respect to the matters concerning which he was questioned today.

MR. SYME: You aren't presumed to know those things unless it is shown that you have a contact, or that this witness has had a contact by which he got such information. He is testifying, at best, on conclusions or hearsay evidence. 103

MR. ALTIERI: I think Mr. Syme is confusing the weight of the testimony with the right of the General Counsel to ask the witness the question.

Let Mr. Syme cross-examine and destroy that testimony in any way he can.

I think Mr. Syme is arguing on the basis of how he can possibly know, or the weight of the testimony. He is directing himself to the weight of the testimony, and he is confusing that with our right to question about it.

TRIAL EXAMINER BELLMAN: I am aware of the difference between the question of weight and the question of admissibility, and matters of admissibility aren't ironclad matters.

Often the official trying the case has to attempt some pretty fine distinctions as to what may or may not reasonably be admissible under certain conditions.

It seems to me that you have asked this witness for certain types of generalizations, which at this time I am not willing to permit you to go into.

I am willing to consider your recalling this witness later. However, you haven't asked this witness specific questions about his specific experience and specific situations, but you asked him for a generalization, a general evaluation, and I am not prepared at this time to permit that; so I will make the same ruling as with respect to the previous witness. The matter will be reserved, and, if later you wish to approach the question again, an opportunity to press the matter again at that time will be given you.

The witness, accordingly, will be excused, subject to recall.

MR. ALTIERI: May I have an exception?

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TRIAL EXAMINER BELLMAN: You have the same automatic exception that the respondents have, of course.

MR. ALTIERI: All right, your witness, Mr. Syme.

MR. SYME: Your Honor, I am going to ask you, in view of the hour, to allow me to withhold my cross-examination of the witness until tomorrow.

We have been here all day, and I would prefer very much, with your permission, to institute this cross-examination tomorrow morning.

For that reason, I ask you to take an adjournment at this time.

TRIAL EXAMINER BELLMAN: I would prefer to go on until at least 4:30.

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MR. SYME: All right, if you want to.

TRIAL EXAMINER BELLMAN: If you want to reserve cross-examination of this witness for some other reason, I will hear you on that.

MR. SYME: I have no other reason, but I feel that I have done a good day's work, and in view of the inclement weather, I ask you to adjourn now until tomorrow morning.

TRIAL EXAMINER BELLMAN: I realize that the weather is poor, and that we have a noisy courtroom here, but I would prefer it if you would proceed.

MR. SYME: All right, sir.

CROSS-EXAMINATION

Q. (By Mr. Syme) Mr. Langer, when did you first take Vitti into your employ? A. October, 1945. You mean first?

Q. That is what I said, when did you first take him into your employ? A. About 1938. 106

Q. How old was he then? A. 16.

Q. What? A. About 16.

Q. He continued to work with you off and on down to the present time? A. That's right.

Q. And so did Carlucci? A. That's right.

Q. When did you first take Carlucci into your employ? A. 1930.

Q. How old was he then? A. He was through with school.

Q. About how old was he? A. I can't tell you.

Q. Didn't you have any idea how old the man was when you put him to work? A. No.

Q. No idea whatsoever? A. No.

Q. You couldn't tell us whether he was ten or forty? A. Well, he was old enough to have working papers. That was what he said.

Q. Didn't you look at the working papers to see how old he was? A. No. I can't remember back to 1930 as to 107 how old the man was.

Q. Or about how old he was? A. Maybe 17.

Q. That is your best recollection? A. Yes, sir.

Q. Now, those two men have been working with you off and on from 1930 down to the present time, haven't they? A. That's right.

Q. Neither one of them has ever belonged to the union; isn't that correct? A. To my knowledge, they haven't, no.

107 Q. Now, you said something about the fact that on one occasion when they were working for you, there was no objection on the part of the union officials? A. Yes, sir.

Q. Do you remember testifying to that effect? A. Yes, sir.

Q. That came about substantially as follows, didn't it? It was a busy time, when most electricians were employed? A. That's right.

Q. And you applied to this union, Local 501, for electricians? A. That's right.

Q. And they couldn't give you any? A. That's right.

Q. All the members of the organization were employed? A. That's right.

Q. And they told you that you could put these two men to work because they couldn't give you men to do the work? A. That's right.

Q. And they worked on what was commonly known or spoken of as a permit? A. That's right.

Q. That is, they had permits. A. That's right.

Q. Later on the union had men that it could furnish to you? A. That's right.

Q. And they sent two men to you? A. Yes, sir.

Q. Can you give me the names of those two men? A. I did that before.

Q. Do you mind doing it again?

TRIAL EXAMINER BELLMAN: Now, Mr. Witness, you answer the questions that are asked you.

THE WITNESS: Ray Baker and Sal Massinelli.

Q. (By Mr. Syme) And when those two men arrived, you laid off Carlucci and Vitti? A. I laid them off before the men arrived. 109

Q. You laid them off, and then the men came? A. Baker came one day and Massinelli came the following day.

Q. And did you lay off your two men before the union men arrived? A. Yes.

Q. You kept one of the men for two days? A. Yes.

Q. Which one was that? A. Ray Baker. He requested to be shaped up.

Q. And you kept him in your employ for two days? A. Yes.

Q. And then you laid him off? A. Yes, because he asked for it.

Q. How long did you keep the other man? A. Well, he got sick after the first day, and he stayed away for about a week, I think, and then he came back.

Q. How long did he stay? A. He stayed for four days.

Q. And then did you let him go? A. Yes.

Q. And did you let the other man go? A. Which other man?

Q. The other man that we have been talking about, Vitti or Carlucci? A. They weren't there.

Q. You had let them go? A. Previously, yes.

Q. After these men from the union reported and worked and then left, you put Carlucci and Vitti back to work? A. Yes.

Q. And they have been working for you ever since? A. Right.

Q. They were the only two men you had working for you? A. No.

Q. Well, who else? A. George Hospodar.

Q. Outside of those three men, you had no others? That was the limit of the number of your employees? A. Well, I had an apprentice boy.

Q. I am speaking of electricians. A. No.

110 Q. The most you had were those three men? A. That's right.

Q. You never had any outsiders working with these three men? A. No, sir.

Q. Your biggest payroll was these three men? A. That's right.

Q. Now, you talked about belonging to Local 646. A. Yes, sir.

Q. That is in Washington, isn't it? A. No, sir, Covington, Virginia. That is 464.

Q. Now, how long did you belong to that union? A. Since 1940, until I went back in business.

Q. You went back in business when? A. 1944.

Q. So that you belonged to this Covington Local for about four years? A. Yes.

Q. You signed up with Local 501 as an employer on one occasion, didn't you? A. Yes.

Q. How long did you work under that contract with that union? A. About two years.

111 Q. When did you cease operating under that contract? A. They told me that I had ceased. I didn't cease myself. They told me.

Q. When was that? A. Around June of 1947.

Q. When did you sign the agreement? A. Wait a minute, wait a minute. August of 1947, I was then officially notified that I didn't have any contract at the Trade Board, any contract with the union.

Q. They told you that the contract was cancelled? A. Yes, at the hearing.

Q. Did they tell you why? A. No.

Q. Did you ask? A. Yes.

Q. And did they give you any answer to your questions? 112
A. No, sir.

Q. Now, you had a hearing before the Board, didn't you? A. Yes.

Q. Did they tell you what the hearing was about? A. No.

Q. And didn't they tell you the hearing was because you employed non-union labor? A. No.

Q. They never gave you any reason whatsoever? A. None whatsoever.

Q. And you never asked? A. What do you mean, I never asked? Sure I asked.

Q. You never asked for any reason, though, did you? A. No.

Q. They simply told you that you were through, that the contract was voided, and you went on your way; isn't that right? A. On August, 1947—

Q. Did they tell you that your contract had been voided? 113
A. The Chairman of the Board, which I asked if I had a contract with him, said No, and that was the first I knew that I had no contract with him.

Q. When was this? A. In August of 1947, when I met with the Trade Board.

Q. Where was that meeting held? A. At the union rooms.

Q. In Mt. Vernon? A. Yes.

Q. Can you give us the date of that hearing? A. No.

Q. Approximately? A. I said August, 1947.

Q. That is the best that you can give us? A. That is the best that I can give you.

Q. Well, now, there has never been any objection by this local to the material that you used in your construction work, has there? A. No, sir.

Q. They never questioned your right to use the material that you did use? A. No, sir.

114 Q. So far as it appeared, the material was satisfactory to the union? A. That's right.

Q. You never personally saw any picketing being done by this union, did you? A. No, sir.

Q. Now, this material that you say you bought either in the State of New York or the State of Connecticut or some other place, that would be delivered to your shop in Port Chester? A. That's right.

Q. It would be put in stock, wouldn't it? A. Well, I bought it for the jobs that I had coming along.

Q. But you would put it in stock pending your assembling it? A. No, not necessarily.

Q. Well, did you, on some occasions, put it in stock? A. Well, maybe a thousand dollars' worth.

Q. Well, stuff would come in, and you would have no immediate use for it, and you would put it in stock, wouldn't you? A. No, not necessarily.

Q. At times? A. No.

Q. Did you ever do that? A. No.

Q. You never put any material that you bought and had deliviered in Port Chester, you never put any of that in stock? A. Not to keep it on the shelves. It was allotted for each job.

115 Q. Well, you put it there, and it would stay there until you were ready to use it; isn't that hight? A. Until I was ready to put it into work on the job that I bought it for.

Q. But in the meantime, it would be on the shelf or in the container, whatever it was? A. Well, it would stay in the shop until I was ready to put it on the job, take it out and put it on the job.

Q. Did you ever have any talk with Mr. Patterson face to face? A. Yes.

Q. When? A. When he signed up the—rather, when he first approached me in White Plains.

Q. That was about signing up? A. Yes.

Q. Did you talk with him then? He was was present when you signed the agreement? A. Sure. I signed it in front of the office in Port Chester, when I and all the other contractors met him to sign up in front of the Post Office.

Q. After that, when you started to wire this house in Greenwich, did you ever see Patterson on that job? A. Yes, I saw him on that job.

Q. Did you talk with him? A. No, I didn't talk with him. The only thing Patterson said was, "Oh, Sammy 116
Langer, the electric man."

Q. Outside of that, you never had any talk with him on the Greenwich job? A. No, sir.

Q. The job involved in this dispute? A. No.

Q. Have you ever been convicted of any crime, Mr. Langer? A. Any crime?

Q. Yes. Have you ever been convicted of any crime? A. A speeding ticket, or something like that, that's all.

Q. Were you ever convicted of any crime in regard to your electrical work?

MR. ALTIERI: I object to this line of questioning, Mr. Examiner. Is he trying to impugn this man's credibility as a witness because of some possible conviction for improper conduct in the way he does his electrical work?

MR. SYME: If he has violated the law and been convicted of a crime, I have a perfect right to show that.

MR. ALTIERI: Unless the crimes involve moral turpitude and bear on the witness' credibility, I don't see how it is relevant or pertinent here.

MR. SYME: I have the right to show a crime for the purpose of impeaching his credibility.

117 TRIAL EXAMINER BELLMAN: I don't think that any conviction necessarily goes to the question of credibility.

MR. SYME: Well, I have asked my question.

TRIAL EXAMINER BELLMAN: Read the question.

(Pending question read by the reporter.)

Q. (By Mr. Syme) Have you ever been convicted of any crime in connection with your work as an electrician on an electrical contract?

MR. ALTIERI: Objection.

TRIAL EXAMINER BELLMAN: Sustained, unless it is a matter which goes to the witness' veracity and honesty.

MR. SYME: That is what I claim, that being convicted of a crime will affect his veracity. That is the purpose of of offering this kind of proof.

TRIAL EXAMINER BELLMAN: Are you claiming that this witness was convicted of a crime which involved his truth and veracity?

MR. SYME: Yes.

TRIAL EXAMINER BELLMAN: I will permit the question.

MR. ALTIERI: I object, if your Honor please. I think it follows, from the nature of the question, that the conviction does not involve any felony, but that if—

MR. SYME: It doesn't have to be a felony. A conviction of a misdemeanor may impeach the witness' veracity.

TRIAL EXAMINER BELLMAN: Counsel claims that the question concerns a crime which involves the witness' truth and veracity.

MR. SYME: Mr. Examiner, it is my position that if we can show that in connection with his electrical work, he has been convicted of violating the law on that subject, we are entitled to show it. 118

TRIAL EXAMINER BELLMAN: Wait a minute, wait a minute. That is not what I understood you were offering. If this man was convicted of violating a building code, that is one thing. If you are claiming that the witness was convicted of a crime which involved the witness' truth and veracity, that is another matter altogether. Now, which are you claiming?

MR. SYME: I claim that he has been convicted on a number of occasions of a crime of violating the law with regard to his electrical contracting work.

TRIAL EXAMINER BELLMAN: I will sustain the objection, if that is the type of conviction you are going into.

MR. SYME: Then I will have to reframe my question.

TRIAL EXAMINER BELLMAN: All right.

You may make an offer of proof, if you wish to, as to what you would propose to show if you were permitted to go into it, or you can go into it in the form of questions.

MR. SYME: That is what I intend to do.

TRIAL EXAMINER BELLMAN: All right.

Q. (By Mr. Syme) In or about January, 1935, the 17th day of January, 1935, were you convicted in the City Court of the City of White Plains, upon the complaint of H. Abbott Griffin, Chief of the Fire Department of the City of White Plains, in that on February—

119 MR. ALTIERI: Now, forgive me for interrupting, but I object to the very mode of asking the question. Of course, I realize that this is a trial before the Examiner, and it does not involve a jury, but Mr. Syme is trying to read into the record, for whatever prejudicial effect it may have, the very thing that the objection which was sustained was intended to keep out of the record.

MR. SYME: Well, your Honor told me to put the question, and I am following your suggestion.

TRIAL EXAMINER BELLMAN: Well, I asked you whether or not you were claiming that this witness was convicted of a crime which involved his integrity, honesty and veracity. You said that you were going to show that he had done such things, and then you said it was a matter of violating the building code, and that that went to his veracity as a witness.

MR. SYME: Yes, sir, that is my position. If I can show any conviction against a witness, it tends to attack his veracity.

TRIAL EXAMINER BELLMAN: I don't think that is so, and I think that in the usual court procedure, you don't attack veracity on that ground.

MR. ALTIERI: May I point out that the term "crime"
120 is not applied to that type of violation. That is a violation or an ordinance, like a speeding ticket, and things like that.

TRIAL EXAMINER BELLMAN: I don't like to cut you off without giving you an opportunity to frame your question specifically, but as I understand what you propose to show, it is a violation of the building code of some kind. 120

MR. SYME: Yes, yes, a *wilfull* violation of the law, with which he was charged with the knowledge. He deliberately and wilfully violated the law.

TRIAL EXAMINER BELLMAN: You want to offer a series of violations of building code laws for the purpose of showing that he is not a person of truth and veracity?

MR. SYME: Yes.

TRIAL EXAMINER BELLMAN: I will give you a general ruling. In view of the fact that you want to frame your questions specifically—

MR. SYME: Well, if you rule against me, I can't see any reason for asking them.

TRIAL EXAMINER BELLMAN: Well, I don't think that that goes to the witness' truth and veracity, and it is not a proper method of attacking the witness' credibility.

MR. SYME: Will you grant me an exception?

TRIAL EXAMINER BELLMAN: Surely.

MR. SYME: That is all I have. 121

TRIAL EXAMINER BELLMAN: Do you have any further examination of the witness?

MR. ALTIERI: No, I don't believe so.

TRIAL EXAMINER BELLMAN: Subject, then, to the reservation as to possible recalling of this witness, the witness is excused.

(Witness excused.)

TRIAL EXAMINER BELLMAN: I indicated earlier that we would adjourn some time around 4:30 or possibly as late as five o'clock, depending upon a convenient breaking point.

We have finished with this witness, but it is not quite 4:30.

Do you have any short witnesses, or is this a satisfactory time to adjourn?

MR. ALTIERI: I think this is a satisfactory time to adjourn. I have two witnesses, but they might take a little time, and they are willing to return.

TRIAL EXAMINER BELLMAN: Off the record.

(Discussion off the record.)

TRIAL EXAMINER BELLMAN: On the record.

MR. ALTIERI: Mr. Examiner, we have made inquiry of the office of the Chief of Police here, and he tells us that customarily they have some matters that they attend to here beginning about nine o'clock in the morning, and usually they are through in the neighborhood of 10:30.

122 May I suggest, therefore, that our meeting tomorrow and Friday, if that is necessary, start at 10:30?

TRIAL EXAMINER BELLMAN: If the courtroom is not available until 10:30, I suppose we would have to start then.

I will say for the record that I would like to get five or five and one-half hours of hearing a day, and that would mean that normally we would have to go on until five o'clock.

I will now set the hours from 10:30 a.m. to 1, and then from 2 to 4:30, or 5. I think perhaps an hour for lunch will be long enough.

I think in that way we will get in five or five and one-half hours a day.

The meeting is adjourned until tomorrow morning at 10:30 o'clock, in this courtroom.

(Whereupon, at 4.25 p.m., the hearing adjourned to Thursday, August 5, 1948, at 10:30 a.m.)

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40

123

Port Chester, New York,
Thursday, August 5, 1948

Met, pursuant to adjournment, at 10:30 a.m.

Before:

EARL S. BELLMAN, Trial Examiner.

Appearances:

JAMES V. ALTIERI, appearing on behalf of General Counsel of the National Labor Relations Board.

SYDNEY A. SYME, ESQ., 201 Main Street, White Plains, New York, appearing on behalf of Respondents.

SAMUEL LANGER, 108 Purdy Avenue, Port Chester, New York, appearing for Samuel Langer.

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PROCEEDINGS

TRIAL EXAMINER BELLMAN: The hearing will be in order.

MR. ALTIERI: May I have this document marked for identification, please, as General Counsel's Exhibit No. 2?

125 (Document referred to was marked General Counsel's Exhibit 2 for identification)

MR. ALTIERI: Mr. Examiner, it is stipulated—

MR. SYME: Just a moment, please.

Mr. Examiner, counsel is about to read a proposed stipulation in regard to a document which, for descriptive purposes, we will call an analysis. It is an analysis made by some Labor Board official.

I raise no question that, if called, the analyst would give the testimony contained in this document, but I reserve the right, if the paper itself is offered in evidence, to make my formal objections, not as to the manner of proof, but as to the contents of the document.

Do I make myself plain? In other words, I am waiving the necessity of bringing the analyst here from Washington to testify, but I wish to interpose such objections to the contents as I deem proper.

TRIAL EXAMINER BELLMAN: All right, you have that right to make your objections.

MR. ALTIERI: It is stipulated by and between counsel for the General Counsel and counsel for the respondents that if Norman P. Mathias were called to the stand, he would testify as follows: "I am an industrial analyst employed by the National Labor Relations Board, 815 Connecticut Avenue, Washington 25, D. C. The attached

exhibit, which consists of twelve separate analyses, numbered 1 to 12, respectively, were prepared in the Industrial Analysis Branch of the National Labor Relations Board under my supervision, and I certify that they are true and correct compilations of the information therein contained from the official sources listed therein."

I offer in evidence General Counsel's Exhibit No. 2 for 126
identification.

MR. SYME: The respondents object to the admission of this paper in evidence on the ground that the contents of the analyses are incompetent, irrelevant and immaterial, and have nothing whatsoever to do with this litigation.

If you will examine the document, which is before you, you will find that this is supposed to be an analysis of work done throughout the United States, starting back as far as the year 1939, long before there was any such litigation pending and long before the Taft-Hartley Act was passed, and it covers a field which has absolutely no connection whatsoever with this litigation. It is just an omnibus review of commercial life in the United States, starting in 1939 and coming down to date.

MR. ALTIERI: The exhibit is being offered for whatever 127
assistance and guidance it may furnish the Examiner with respect to official government publications of wide notoriety and common acceptance, and of which this examiner may properly take official notice.

MR. SYME: How can what happened in California help your Honor to decide this case? It is like the flowers that bloom in the Spring; it has nothing to do with the case.

MR. ALTIERI: It is general information with respect to the construction industry in general and special contractors, like Langer, in particular.

We believe that the effect of boycott activities against special trades contractors of Langer's size thereby can be better understood.

TRIAL EXAMINER BELLMAN: If you want to argue specific exhibits, I will be glad to take the time now to examine the document.

I am going to reserve ruling now until I have had ample time to study the document, in view of the objection, which I understand is that it is incompetent, irrelevant and immaterial; is that correct?

MR. SYME: That is the basis of my objection. In other words, they have reached out throughout the entire United States and compiled a lot of figures.

Just let me read to you the first page: "National Labor Relations Board, Industrial Analysis Branch, Washington 25, D. C., June, 1948." That is the date this analysis is supposed to have been prepared, and which I assume is correct. Then it goes on: "Re Samuel Langer. Exhibit 1, Value of Construction Activity in the United States in the year of 1946—" before this litigation had any conception— "Kind of Construction, all construction. Value, $15,000,000,000. New construction, value, $10,000,000,000. Private residential, new, $3,000,000,000. Public Utilities, new, $856,000,000. Industrial, new, $1,689,000,000. Maintenance and repair—" it looks like $5,660,000,000.

128 Now, how in the name of Heaven can that have anything to do with the fact—if we did—that we boycotted Langer and his jobs? That is just one illustration of what this document consists of.

Now, if you will follow through from page to page, you will find similar figures.

That can't possibly have any application to whether or

ot Langer was boycotted by Local 501 and Patterson. Unless it relates to that, it has no place in this trial. It is imply encumbering the record with a lot of figures that have absolutely nothing to do with it, and which by no conception will enable your Honor to decide this case.

TRIAL EXAMINER BELLMAN: I am going to reserve ruling on this document until I have had an opportunity to examine and consider the document in the light of respondents' objection.

MR. ALTIERI: In view of the reservation on the ruling, 129
and since I am not bringing down the witness who might formally validate the method of proof, I want it clearly understood that there is no objection to the method of proof.

MR. SYME: I don't raise any technical objections as to failure of proof. I am assuming they have properly proved the existence of such a document. But then I say that it has nothing at all to do with this case.

TRIAL EXAMINER BELLMAN: In view of the extent of the document and your objection, I am not going to rule on it until I have had ample time to study the document.

The ruling is reserved, without prejudice to anybody's right to argue it further, if you wish to.

MR. ALTIERI: Mr. Abel, will you take the stand?

ABRAHAM ABEL

a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Will you please state your full name and address for the record?

THE WITNESS: Abraham Abel, 40 Clark Place, Port Chester, New York.

DIRECT EXAMINATION

130 Q. (By Mr. Altieri) What business are you in? A. Real estate business.

Q. Are you connected with the Middletown Recreation Center, Inc.? A. Yes, sir

What position do you hold in that corporation? A. Treasurer.

Q. And does that corporation own the property located at the intersection of West Chester Avenue and New Broad Street, Port Chester, New York? A. Yes, sir.

Q. The corporation is now engaged in constructing some stores on that site, isn't it? A. Yes, sir.

Q. Who is in charge of the construction of the building in question on behalf of the corporation, Mr. Abel? A. I am.

Q. Now, on or about May 4, 1948, did you have a conversation with William Patterson, the delegate of Local 501 of the IBEW? A. Yes, sir.

Q. Will you state to us what that conversation was? What did he say to you and what did you say to him?

131 MR. SYME: We object to that as incompetent. It relates to a job in the City of Port Chester, and has no relation whatsoever to the job in Greenwich, Connecticut. It is not pleaded in the complaint, and it is not even referred to in the complaint. We object to it on the ground that it is an attempt to bring in a job which was not pleaded and as to which no charge was made against the respondents, and it is therefore incompetent. It is the same objection that we made yesterday, as to which you sustained the objection.

TRIAL EXAMINER BELLMAN: Just a moment.

Will you state the general purpose and what aspect of the complaint this testimony goes to?

MR. ALTIERI: This testimony goes to the object and purpose for which Langer was boycotted on the specific job site in Greenwich, Connecticut. It also very directly relates to an allegation in the complaint that the respondents have threatened to boycott Langer on other jobs.

MR. SYME: What section of the complaint is that?

TRIAL EXAMINER BELLMAN: I remember such an allegation in the complaint. I think it is paragraph 16.

MR. ALTIERI: It is toward the end.

TRIAL EXAMINER BELLMAN: On the basis of your statement and paragraph 16 of the complaint, I will overrule the objection.

Q. (By Mr. Altieri) Will you give us the conversation? A. Well, I was standing at the job, and this young fellow walked over to me and said, "Are you the owner here?"

I said, "Yes." I had known him. I had seen him around 132
before, but I couldn't just recall who he was then.

He said, "Are you in charge of the complete job? Are you doing the job yourself?"

I said, "Yes."

He said, "Well, who is doing the wiring, the electrical work?"

I told him, "Sam Langer."

He said, "No good."

I said, "What's the reason for being no good? He has done all my work and he has done other jobs for me, and he is all right."

He said, "Well, he is no good with the union."

Then I knew he was from the union. I didn't know it until then.

I said, "He done the job on South Main Street. He was all right there. He did the job for my house, and he was all right there, too.

He said, "Well, if he does this job, I will put a picket line in front of the place."

So I told him what I thought he could do with the picket line, and I cut the conversation off right there. I told him that the man had a contract.

Q. (By Mr. Altieri) Did he say what would happen to the job? A. He said the job would stop, because no one would pass the picket line.

133 After that he calmed down—

MR. SYME: I object to that.

TRIAL EXAMINER BELLMAN: Sustained.

THE WITNESS: Well, he toned down a bit then—

MR SYME: I object to that; I move to strike that "toned down."

TRIAL EXAMINER BELLMAN: Strike it.

THE WITNESS: Well, I don't know what you call it. He took a different attitude. He said he wanted to warn me of the different jobs.

Well, I said that we had always been fair with them. I reminded him of a job that he did in Mt. Kisco, and the fellow didn't belong to the union there, and I went to the fellow and asked him to join the union, and he did, and I reminded him of that.

I told him that in this situation, I might have done it here, too, but I couldn't go to the meetings to find out whether Langer was good or wasn't, and the conversation stopped there.

MR. ALTIERI: That's all I have.

CROSS-EXAMINATION

Q. (By Mr. Syme) Your job wasn't picketed, was it? 134
A. No.

Q. You went on with the job with Langer? A. No. The job hasn't been wired yet.

Q. Did you finally finish it with Langer? A. No. It hasn't even started yet.

Q. You are still in the process of construction? A. That's right.

Q. Has any electrical work been done there? A. No.

Q. Have you had Langer or any one else on the job doing electrical work? A. No.

Q. There has been no electrician whatsoever on the job? A. No.

Q. And you have had no picketing of any kind? A. That's right.

MR. SYME: That's all.

TRIAL EXAMINER BELLMAN: Are there any further questions?

MR. ALTIERI: No.

TRIAL EXAMINER BELLMAN: The witness is excused.

(Witness excused.)

MR. ALTIERI: Dominick Carlucci, please.

DOMINICK A. CARLUCCI

a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Dominick A. Carlucci, 74 Purdy Avenue, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) What is your occupation, Mr. Carlucci? A. Electrician journeyman.

Q. By whom are you employed? A. Samuel Langer.

135 Q. How long have you been in Mr. Langer's employ? A. Since 1930.

Q. Have you been continuously in Mr. Langer's employ since 1930? A. Up until 1940, when he went out of business.

Q. When he went out of business, were you employed elsewhere? A. Yes.

Q. Where? A. By the Port Chester Electrical Construction Company.

Q. How long did you work for them? A. Until I was drafted into the Service, from 1940 to 1943.

136 Q. When you were employed by the Port Chester Electrical Construction Company, did you belong to any union? A. I worked on a permit for a short time, and then—

Q. A permit from whom? A. From Local 501, I believe. The Port Chester Electrical Construction fixed that up some way or another, and I had a chance then to become affiliated with Local 37, in New Britain, Connecticut.

Q. Did you become a member of Local 37 in New Britain, Connecticut? A. Yes, I did.

Q. You told us you went into the Armed Services in 1943. What branch did you enter? A. United States Naval Construction Battalion.

Q. Did you go overseas? A. Yes.

Q. When did you return to the United States? A. 1945.

Q. Did you thereafter apply for your job back with Mr. Langer? A. I met Mr. Langer in January, 1946, and I asked him for a job, and he said I would have to become affiliated with the union.

Q. When were you discharged from the Armed Services? A. October 16, 1945.

Q. After this conversation with Mr. Langer, did you try to join the union? A. Yes, sir, I did.

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Q. Will you describe what efforts you made? A. I wrote to my own Local for a traveler's card in order to deposit it in Local 501.

After some effort, I got to see the Executive Board, and they told me that my card was no good, because it wasn't five years old.

Then I asked if they would forget about the card and give me a new application so that I could transfer from New Britain to Local 501, and they told me that they were saving the jobs for the men who were still in the Armed Services.

Q. Whom do you mean by "they"? You said "they." Whom do you mean? A. The Executive Board of Local 501.

Q. Are you willing to join that union today, Mr. Carlucci?

MR. SYME: I object to that as immaterial.

TRIAL EXAMINER BELLMAN: What bearing does that have?

MR. ALTIERI: We have been measuring materiality here with a fine tooth comb, Mr. Examiner.

It relates generally to the story of this witness as to his efforts to join the union and his lack of success.

MR. SYME: What has to do with the boycotting of Langer in Connecticut?

138 TRIAL EXAMINER BELLMAN: I will permit the question. I will overrule the objection.

THE WITNESS: Yes, I am willing to join the union.

Q. (By Mr. Altieri) Did you ever have a conversation with any official of Local 501 with respect to what initiation fees would have to be paid if you wanted to join the union?

MR. SYME: I object to that as immaterial.

TRIAL EXAMINER BELLMAN: Well, there is a specific provision in the Act which, it seems to me, if you are making a contention about excessive initiation fees, should be alleged.

MR. ALTIERI: I am not contending that there were excessive initiation fees.

TRIAL EXAMINER BELLMAN: Then the objection is sustained.

Q. (By Mr. Altieri) When were you re-hired by Mr. Langer? A. In July of 1946.

Q. Did Mr. Langer ever lay you off after July, 1946? A. Yes.

Q. When? A. In May of 1947.

Q. How long were you laid off? A. About two weeks.

Q. You have been working for him ever since? A. After he re-hired me, I have been working ever since.

MR. ALTIERI: Your witness, Mr. Syme.

CROSS-EXAMINATION

Q. (By Mr. Syme) When did you join Local 37? A. 139
September 4, 1941.

Q. That Local is in New Britain, Connecticut? A. That's right.

Q. When did you sever your connection with Local 37? A. In February, 1946.

Q. So that since February, 1946, you have not been a member of any electrician's labor organization? A. That's right.

Q. You have been working steadily for Langer all during that period of time? A. No, sir.

Q. Well, except when you went overseas? A. No. When I first came back from overseas, I didn't work for Langer.

Q. When did you go to work for Langer after you came back from overseas? A. In July, 1946.

Q. From July, 1946, to the present time, you have been working steadily for Langer? A. With the exception of the two weeks that I have been laid off.

Q. With the exception of the two weeks that you were laid off, you have been working for Langer steadily? A. That's right.

Q. And all during that time, you haven't been a member of any electrical union? A. That's right.

Q. When were you born? A. December 20, 1911.

Q. December 20, 1911? A. That's right.

Q. The first time you went to work for Langer was back in 1930? A. That's right.

Q. You worked for him for ten years? A. That's right.

140 Q. Until 1940? A. That's right.

Q. In round numbers? A. That's right.

Q. Now, from 1940 to 1943, what did you do? A. Worked for the Port Chester Electrical Construction Company.

Q. Were you a union man then? A. The first couple of months I was not, until I found a chance to get into the Local on one of the jobs that I was working on.

Q. That was Local 37? A. Local 37, in New Britain, Connecticut, yes.

Q. At no time have you ever been a member of any labor union in New York State, have you? A. No, sir.

Q. You worked on this house up in Greenwich, Connecticut, didn't you? A. Yes, sir.

141 Q. That is, you worked there for Langer? A. Yes, sir.

Q. You know what house I am talking about, don't you? A. The one on Ridge Street and Douglas Drive?

Q. Yes. A. Yes.

Q. The one that this trouble is about? A. Yes, sir.

Q. How long did you work on that job? A. About a day and a half.

Q. Were you non-union then? A. I think so.

Q. Well, you know you were, don't you? A. I never had belonged to an organization, But Langer was affiliated with the union, and I was working under him, under a permit, for a while.

Q. How long did you work under a so-called permit? A. From July until we had the trouble at the Big Dollar Market, in Port Chester.

Q. How long was that? A. I don't know. 142

Q. About? A. About a year.

Q. And then, after that, Langer severed his connections with the labor organization? A. I don't know whether Langer did, but connections were severed by some one.

Q. In other words, Langer ceased to be a member of the organization? A. That's right.

Q. And you continued to work for him? A. That's right.

Q. You were then non-union? A. That's right, yes.

Q. So that during all this period of time, except when you were working under the permit, as you call it, you were working for Langer as a non-union employee, weren't you? A. That's right.

MR. SYME: That's all.

REDIRECT EXAMINATION

Q. (By Mr. Altieri) Mr. Syme has asked a number of times whether, from February, 1946 on, such work as you did for Langer, you did as a non-union employee. You did try, during that period of time, to join Local 501? A. I found myself at 9 West Prospect Street a number of times, trying to see the Executive Board, without success.

Q. Did you ever succeed in joining this union? A. No, sir, I didn't.

MR. ALTIERI: That's all.

RECROSS-EXAMINATION

143 Q. (By Mr. Syme) Did I understand you to say that you never saw the Executive Board? A. I saw them the first time I was there, but never after that.

Q. You did get in to see them, though, didn't you? A. The very first time.

Q. You got in to see them? A. That's right.

Q. And you talked to them? A. Yes, sir.

Q. Did you ever join after that? A. No, sir. They didn't give me an application. I asked for an application to join the Local, and they never gave me that courtesy.

Q. So that you never filed an application to join that Local, did you? A. That's right, sir.

Q. (By Mr. Altieri) When you say you never filed an application, you mean you never filled out any written papers? A. That's right.

144 Q. But you did apply to the union for membership, did you not? A. I did.

MR. ALTIERI: That's all.

MR. SYME: I have nothing further.

TRIAL EXAMINER BELLMAN: The witness is excused.

(Witness excused.)

MR. ALTIERI: Joseph D. Vitti, please.

JOSEPH D. VITTI

a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Joseph D. Vitti, 115 Lake Street, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) What is your occupation, Mr. Vitti? A. Electrician.

Q. How old are you? A. 24. I will be 24 in November. I am 23 now.

Q. You are employed by Samuel Langer? A. Yes, sir.

Q. When did you first go to work for Mr. Langer, Mr. Vitti? A. Well, I was going to school at the time. It was about the latter part of 1938. 145

Q. How old were you when you first went to work for Mr. Langer? A. I was about 14, sir.

Q. Were you going to school at the time? A. I was.

Q. Did you work after school hours for him? A. I did. It was just a matter of an hour or two, cleaning the truck out.

MR. SYME: Doing what?

THE WITNESS: Cleaning the truck out and sweeping the shop.

Q. (By Mr. Altieri) Did you do any electrical work during that time? A. Little things. I couldn't do very much.

Q. When Mr. Langer went out of business in 1940, what did you do? A. In 1940?

Q. Yes. A. I worked for another electrician.

Q. What was his name? A. Walter Africa, just like the Continent.

Q. Where was he located? A. Here, in Port Chester. 146

Q. What kind of work did you do for him? A. Small work. It wasn't big projects or anything like that.

Q. I mean, what was the nature of your job? A. Helper, helper.

Q. Electrician's helper? A. Yes.

Q. How long did you work for him? A. Well, I don't recall the—

Q. Can you tell us approximately how long? A. Well, off and on, it was six or seven months.

Q. Did you work for any one else after that? A. I worked over at my uncle's, and stuff like that, until I went into the Service.

Q. When did you go into the Service? A. February, 1943.

Q. How long did you remain in the Armed Services? A. Until October 6, 1945.

Q. Did you apply to Mr. Langer for a job at that time? A. I did. I wrote him a letter telling him that I would like to have my old position back.

Q. Did you see Mr. Langer about that time and speak to him personally? A. I did, on furlough, on convalescent furlough.

147 Q. When was that? A. I think that was in August.

Q. What year? A. 1945. It was about two or three months before I come out of the Service.

Q. When you applied for your job, what, if anything, did Mr. Langer say to you? A. He said, "You will have to get affiliated with the union, because my shop has been signed up with them."

Q. And did you go overseas, Mr. Vitti? A. I was.

Q. What theatre? A. European Theatre.

Q. You were wounded in action, were you not? A. I was.

Q. Now, did you make any effort to join the union? A. I did. On my third convalescent furlough that I had, yes.

Q. When was that? A. In the month before October.

Q. September is the month before October? A. September. Around that time. Even August it might have been.

I wanted a thirty-day—more of less of a job, more or less of a thirty-day job. I liked to spend my time working during the convalescent furlough. You know, I had my cane, but I could clean up, and things like that, and Sam told me that he would drive me down to the Local in Mt. Vernon, Local 501. He was going to New York, but he dropped me there, and I was called before the Board, and they gave me permission to work for Sam for thirty days.

Q. Did Sam put you to work? A. Sam did, yes, until I went back to the Service.

TRIAL EXAMINER BELLMAN: Approximately when 148
was it that you got this thirty-day permit or permission?

THE WITNESS: I don't remember the correct date, sir. It was between August and September. I had thirty days.

TRIAL EXAMINER BELLMAN: What year?

THE WITNESS: In 1945.

Q. (By Mr. Altieri) You say that after the thirty days were up, you went back into the Service? A. Yes.

Q. When were you discharged? A. October 6, 1945.

Q. Did you go to work for Mr. Langer after that? A. The following day I went.

Q. Have you been working for him ever since? A. I have, I have, until two weeks of 1947.

Q. What happened then? But first, when in 1947? A. In May, somewhere in May. I don't know the correct date.

Q. There was a two-week period that you didn't work for Langer, and with that exception you have worked for him ever since? A. Ever since, that's right.

Q. Now, with the exception of this occasion you have told us about, when you applied for and got a thirty-day permit, have you made any other efforts to join Local 501?

A. I did on two or three times. I was never allowed to go into the place. There was an elderly fellow there that gave us a slip of paper from a pad and asked us to put our name down and the address, and then he brought it inside an office, and I didn't know where he brought it to or what became of it.

Q. Have you, at all times since being hired by Mr. Langer, been willing to join this Local, Local 501?

MR. SYME: I object to that as immaterial.

TRIAL EXAMINER BELLMAN: Overruled.

A. I have.

MR. ALTIERI: I have no further questions.

CROSS EXAMINATION

149 Q. (By Mr. Syme) Now, you started to work for Langer in what year? A. Somewhere in 1938.

Q. In the year of 1938? A. In the latter part of 1938.

Q. And at that time how old were you? About how old were you at that time? A. Oh, I was around 14 years old.

Q. Was that the time that you went down to Local 501 and got permission to work? A. In 1938? I never heard of 501 at that time.

Q. You didn't go down to 501 for permission to work until you were home on furlough? A. On convalescent furlough, yes.

Q. You went down to the organization then, to Local 501, to their office, and asked for a thirty-day permit or permission, and that was granted? A. It was granted. It wasn't written down or anything like that. It was orally.

Q. Well, you got the permission, didn't you? Whether in black and white or orally, you got permission? A. I got permission, yes, sir.

Q. Then you went back to work for Langer? A. Yes.

Q. And then your furlough was up, and you had to re- 150
port back? A. Yes, sir.

Q. And then you came back later on? A. After I come out of service, I went back.

Q. Then you went back to work for Langer? A. That's right.

Q. At that time you were not a member of any union? A. No. I tried to get affiliated— 151

Q. You were not a member of any union? A. No.

Q. And from then on, you worked for Langer and you were never a member of any union at any time? A. Never.

Q. You are not a member of any union today, are you? A. No.

Q. You are still working for Langer? A. Still working, yes.

MR. SYME: That's all.

TRIAL EXAMINER BELLMAN: Are there any other questions of this witness?

MR. SYME: I said I am through, sir.

TRIAL EXAMINER BELLMAN: Are there any questions by the Board?

MR. ALTIERI: No, sir.

TRIAL EXAMINER BELLMAN: The witness is excused.

(Witness excused.)

MR. ALTIERI: Interstate Lumber and Mill Corporation, please.

PETER SELIGMAN

a witness called by and on behalf of the General Counsel, 152

and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Will you please state your full name and address for the record?

THE WITNESS: Peter Seligman, 37 Summit Avenue, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Mr. Seligman, what is your occupation? A. General Manager of Interstate Lumber and Mill Corporation.

Q. What were the total gross annual purchases of the Interstate Lumber and Mill Corporation during the year 1947, Mr. Seligman?

MR. SYME: I object to that as incompetent, irrelevant and immaterial. It has no connection whatsoever with the charges in the complaint.

MR. ALTIERI: Will you accept it subject to connection?

TRIAL EXAMINER BELLMAN: I believe there may be a bearing—

MR. SYME: I object to the cart being put before the horse. If he wants to make it competent, let him lay the proper foundation before the evidence is received. He says he will connect. If he will connect it, let him lay the foundation first, not do it wrong way first. If he is able to connect, he can connect right way.

153 MR. ALTIERI: I wish that I would be permitted to try my case in my own way.

MR. SYME: He can try his case in his own way, subject to my objections.

TRIAL EXAMINER BELLMAN: Of course, you have a right to object.

Will you read the pending question, please?

(Pending question read.)

MR. ALTIERI: Would you like an explanation of my general purpose?

TRIAL EXAMINER BELLMAN: I certainly would.

MR. ALTIERI: All right.

The testimony from this individual is being elicited in anticipation that it will have a direct bearing on the effect on interstate commerce of any stoppage of work which is brought about by the sort of conduct with which the union is charged here.

This organization which Mr. Seligman represents sells materials to the Giorgi Construction Company, the general contractor who was putting up this job. It sells materials to Nicholas Deltoro, the carpenter contractor, whose men were required to leave the job, and it sold the material which was utilized by the contractors on this job in erecting the framework and doing other parts of this job.

I respectfully submit that it cannot be said that there is no basis of relevancy or materiality to the issues in this case with respect to the testimony that I seek to elicit from this witness.

154

MR. SYME: There isn't a scrap of testimony in this case to sustain the assertions just made by counsel.

TRIAL EXAMINER BELLMAN: I think it might be well to establish by this witness that he has done the type of business you indicated before you go into the gross annual purchases of the company.

MR. SYME: May I add that there isn't a scrap of testimony from this gentleman or from any one else to show that a single foot of lumber or any other material went from his yard to the job in Greenwich.

154 TRIAL EXAMINER BELLMAN: Lay your foundation.

Q. (By Mr. Altieri) Mr. Seligman, what is the nature of the business of the Interstate Lumber and Mill Corporation? A. General retail yard in the sale of materials, consisting of materials such as lumber, millwork.

Q. Your customers are contractors? A. Contractors, carpenters, or home owners.

Q. Is the Giorgi Construction Company one of your customers? A. Yes, sir.

Q. Is Nicholas Deltoro one of your customers? A. He is.

Q. Did you have occasion to deliver any material to a job located at Douglas Drive and Ridge Street in the town of Greenwich, Connecticut? A. We did.

Q. Now, Mr. Seligman, will you tell us the total annual purchases of materials made by the Interstate Lumber and Mill Corporation during the year 1947?

MR. SYME: I make the same objection again on the same grounds as stated in the last objection.

TRIAL EXAMINER BELLMAN: Overruled. Pro-
155 ceed.

A. In round figures, approximately $700,000.

Q. What percentage, if any, of the material thus purchased by this company was purchased from sources outside the State of Connecticut? A. Approximately about 90 percent.

MR. SYME: I object to that as immaterial.

TRIAL EXAMINER BELLMAN: I will give you a standing objection to this line of examination, with the same effect as if you objected to each question. The objection is overruled.

Q. (By Mr. Altieri) Did you answer that, Mr. Seligman? A. I think I did.

MR. ALTIERI: Will you read the answer?

(Answer read.)

Q. (By Mr. Altieri) And I believe you have indicated that your place of business is located in East Portchester, in the State of Connecticut; is that right? A. Yes, sir.

TRIAL EXAMINER BELLMAN: Just a moment. Off the record.

(Discussion off the record.) 156

TRIAL EXAMINER BELLMAN: On the record.

Q. (By Mr. Altieri) Now, for the record, what is the address of the Interstate Lumber and Mill Corporation? A. South Water Street, East Portchester, Connecticut.

Q. All right, we have it in the record now. A. Yes, sir.

Q. Now, can you tell us approximately how much material Nicholas Deltoro purchased from you during the year 1947?

MR. SYME: I object to that as immaterial.

TRIAL EXAMINER BELLMAN: Overruled.

A. Approximately about $9,000 to $10,000.

Q. Can you tell us how much material he has purchased from you in the year 1948?

MR. SYME: Objection, same objection.

TRIAL EXAMINER BELLMAN: Same ruling.

A. Well, we operate on a fiscal year, ending April 30th,

and since that time it was probably only a few hundred dollars.

TRIAL EXAMINER BELLMAN: The figure you gave us, then, is from July to July?

THE WITNESS: From May 1st to April 30th.

Q. (By Mr. Altieri) From May 1st, 1947, to April 30, 1948? A. That's right.

157 Q. So that the figure you gave us of the total purchases of the firm relate to that same period? A. Yes, sir.

Q. During the period of the last fiscal year, how much material did the Giorgi Construction Company purchase from the Interstate Lumber and Mill Corporation? A. About $380 worth.

Q. Can you tell us, Mr. Seligman, approximately what percentage of the customers of the Interstate Lumber and Mill Corporation purchase material annually from you not in excess of that which you have testified to are the purchases of Nicholas Deltoro?

MR. SYME: I object to the form of that question.

A. Will you repeat that, sir? (Last question read.) A. That is something I can't answer without going further into our records.

Q. Now, you have testified that you made delivery of material to the job site at Ridge Street and Douglas Drive, Greenwich, Connecticut. Who purchased that material? A. Nicholas Deltoro.

MR. ALTIERI: Your witness.

CROSS-EXAMINATION

Q. (By Mr. Syme) The building material that Deltoro purchased from you for this job at Douglas Drive came from your yard at East Portchester, Connecticut? A. Yes, sir.

Q. In other words. it was a shipment from and to the 158
State of Connecticut? A. That's right.

Q. It did not cross any state lines? A. I don't know if it crossed a state line; it went from our yard to the job.

Q. And both places are in Connecticut? A. To the best of my knowledge, they are.

MR. SYME: That's all.

TRIAL EXAMINER BELLMAN: Do you know approximately what percentage of your total sales are made within the State of Connecticut?

THE WITNESS: Well, approximately 80 to 85 percent of our sales are made within the State of Connecticut.

TRIAL EXAMINER BELLMAN: Where are the rest of the sales made?

THE WITNESS: In New York.

TRIAL EXAMINER BELLMAN: Then are your New York sales somewhere between 15 and 20 percent.

THE WITNESS: That's right, sir.

TRIAL EXAMINER BELLMAN: Are there any other questions of the witness?

MR. ALTIERI: No, sir.

MR. SYME: No, sir.

TRIAL EXAMINER BELLMAN: The witness is excused. (Witness excused.)

159 TRIAL EXAMINER BELLMAN: The hearing is in recess for ten minutes. (Short recess.)

TRIAL EXAMINER BELLMAN: The hearing will be in order.

MR. ALTIERI: Mr. Mertz, please.

WALTER A. MERTZ

a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Walter A. Mertz, 52 Glen Avenue, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Mr. Mertz, are you connected in any way with F. C. Mertz & Sons? A. That's right.

Q. What is your connection with that organization? A. I am the owner.

Q. F. C. Mertz is an individual proprietorship, owned by you? A. That's right. F. C. Mertz is a trade name.

Q. Where is that located? A. At the foot of West-
160 chester Avenue, Port Chester, New York.

Q. In what business are you engaged? A. Mason material business.

Q. That is, you are engaged in the purchase and sale of masonry materials; is that correct? A. That's right, that's right.

Q. Is the Giorgi Construction Company one of your customers, Mr. Mertz? A. Yes, sir.

Q. Did you, some time during 1948, deliver material to the Giorgi Construction Company at a job site at Ridge Street and Douglas Drive, in the town of Greenwich, Connecticut? A. What was the name of the job, do you know?

Q. The owner was Kniffen, as I recall it. A. Yes, sir.

Q. Is your answer that you did deliver material to that job? A. Yes.

Q. Now, would you tell us, what were your total annual sales for the year 1947?

MR. SYME: I object to that as incompetent, irrelevant and immaterial.

TRIAL EXAMINER BELLMAN: I will give you a standing objection to this line. I think it is a similar line to what you went into before; is that right? 161

MR. ALTIERI: That's right.

A. $375,000.

Q. (By Mr. Altieri) What were your total purchases during 1947? A. Approximately $290,000.

Q. Is your volume of business for 1948 about the same?

MR. SYME: Same objection.

TRIAL EXAMINER BELLMAN: Same ruling.

A. Yes, for the first six months, about the same.

Q. Now, what percent, if you know, Mr. Mertz, of the material purchased by you during 1947 was purchased outside the State of Connecticut?

MR. SYME: Do I have an objection to this?

TRIAL EXAMINER BELLMAN: Yes, you have a standing objection to this line.

THE WITNESS: Purchased outside the State of Connecticut, did you say?

Q. (By Mr. Altieri) Yes.

TRIAL EXAMINER BELLMAN: The witness' business is in New York, I believe.

Q. (By Mr. Altieri) I am sorry. Outside the State of New York, I mean. A. About 30 percent.

162 Q. Where is the rest of it purchased? A. In the State of New York. We buy from people in the State of New York. Wherever they come from, I don't know.

Q. Do you make any sales to customers located outside the State of New York? A. Yes, sir.

Q. About what percent of your sales are made to customers outside the State of New York? A. About 15 percent.

Q. Specifically, what kind of material do you handle, Mr. Mertz? A. Sand, gravel, stone, cement, neat plaster, plaster material, sewer pipe, brick.

Q. Where do you purchase your cement? A. The cement is from Pennsylvania.

Q. And do you purchase any cement elsewhere than from the State of Pennsylvania? A. We buy a little from Hudson Mill, New York.

Q. What percentage of the cement you purchase is purchased from Pennsylvania? A. That is about 90 percent.

Q. Can you tell us approximately how much cement you purchased during the year 1947? A. Well, let's see. In barrels, about 20,000 barrels.

Q. How much a barrel did that cost? A. It cost us about $3.30 a barrel. You can figure that out.

Q. Now, what kind of material did you deliver to the job at Ridge Street and Douglas Drive in Greenwich, Connecticut? A. We delivered sand, gravel, cement and concrete.

Q. Was the Giorgi Construction Company one of your customers? I believe you testified already that it is one of your customers? A. That's right, yes.

Q. What were the total sales made by you to the Giorgi Construction Company in the year 1947? A. I didn't total it up.

Q. Can you tell us with a reasonable degree of accuracy or certainty approximately how much you sold to the Giorgi Construction Company during the year 1947? A. I have it here. Oh, around $15,000.

Q. Can you tell us approximately how much the Giorgi Construction Company has purchased from you, if any, during the year 1948? A. About $6,000.

TRIAL EXAMINER BELLMAN: Up to the present time? 163

THE WITNESS: This is up to June 30th, not including July.

Q. (By Mr. Altieri) You have a rather substantial number of customers who purchase material from you, have you not, Mr. Mertz? A. That's right.

Q. Can you tell us approximately what proportion of your customers purchase material from you in quantities not in excess of those purchased from you by the Giorgi Construction Company? A. I should say Giorgi was one of our top fellows, along with the rest.

MR. ALTIERI: That is all.

MR. SYME: No questions.

TRIAL EXAMINER BELLMAN: Approximately how many customers do you have?

THE WITNESS: About a hundred.

TRIAL EXAMINER BELLMAN: The witness is excused.

(Witness excused.)

MARTIN LEVINE

164 a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Martin Levine, 170 Summer Street, Stamford, Connecticut.

MR. ALTIERI: Mr. Examiner, I might state briefly for the record that this witness represents a company that is a
165 supplier for Mr. Langer, and I am calling him for the purposes of tying that in with the potential effect on interstate commerce, with which the respondents are charged.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Mr. Levine, are you employed by the Mar Le Company? A. I am the owner.

Q. Is the Mar Le Company a trade name? A. Yes, sir.

Q. And you are the owner? A. Yes, sir, and the general manager.

Q. Where is that company located? A. 170 Summer Street, Stamford, Connecticut.

Q. What is the business of the Mar Le Company? A. Wholesale electrical supplies, materials.

Q. What materials do you handle? A. Electrical construction materials, apparatus and controls, as well as lighting.

Q. What were the total annual purchases of the Mar Le Company during the year 1947?

MR. SYME: Same objection as to the same testimony previously given.

TRIAL EXAMINER BELLMAN: I will give you a standing objection and I will overrule the objection.

Q. (By Mr. Altieri) Will you answer the question? A. I am sorry. What is it? 166

Q. The question is, what were the total annual purchases of the Mar Le Company during the year 1947? A. Approximately $600,000.

Q. What were the total annual sales during 1947? A. Approximately $800,000.

Q. Was the volume of business during 1948 approximately the same? A. Not quite. Approximately the same, though, yes, sir.

Q. Of the total purchases, was any part thereof purchased from sources outside the State of Connecticut? A. Yes, sir.

Q. Can you tell us approximately what percentage of your total purchases were made from sources outside the State of Connecticut? A. Approximately 90 percent, sir.

Q. Was any part of the total sales of the company made to places outside the State of Connecticut? A. Yes, sir.

Q. What percentage please? A. About 25 percent.

Q. Is Samuel Langer one of your customers? A. Yes, sir.

Q. Can you tell us how much material Samuel Langer purchased from you during 1947? A. In 1947, approximately $6,000. 167

Q. Can you tell us approximately how much material Samuel Langer purchased from you in 1948? A. About $500.

Q. About how many customers do you have all told, approximately, Mr. Levine? A. About 600, sir.

Q. What percentage of those customers are individuals or firms who purchase material from you in amounts not in excess of that which is purchased by Samuel Langer? A. Would you repeat that again, sir?

Q. All right. Well, let me find out first, can you tell us with reasonable certainty what percentage of your customers are individuals or firms who purchase from you materials not in excess of that which is purchased by Samuel Langer? A. You mean contractors similar to Samuel Langer?

TRIAL EXAMINER BELLMAN: In other words, of his size or smaller That is what the question means, doesn't it?

MR. ALTIERI: That's right, sir.

THE WITNESS: Well, I would have to guess at that, of course.

MR. ALTIERI: That's right, sir.

MR. SYME: I object to any guesses.

TRIAL EXAMINER BELLMAN: I will sustain the objection as to a guess.

168 Q. (By Mr. Altieri) You can't state with reasonable certainty, then? Is that your answer? A. I can't, with reasonable certainty, no, sir.

MR. ALTIERI: That's all I have.

MR. SYME: No questions.

TRIAL EXAMINER BELLMAN: How far is Stamford, Connecticut, from Port Chester, New York?

THE WITNESS: I should guess about 14 miles. I don't know.

Wait a minute. Just a moment. I will tell you exactly. I should say in the neighborhood of ten miles.

MR. SYME: Is that from Greenwich to Port Chester?

THE WITNESS: From Port Chester to Stamford.

TRIAL EXAMINER BELLMAN: Are there any other questions of the witness?

MR. SYME: No, sir.

MR. ALTIERI: No, sir.

TRIAL EXAMINER BELLMAN: How much time would it take you to find out the answer to this question which was asked you, namely, what percentage of your six hundred customers are approximately the same size or smaller than Mr. Langer in purchases?

THE WITNESS: About an hour, sir. If I had the books in front of me, not more than that. I think I understand the question now, and I could answer it accurately.

TRIAL EXAMINER BELLMAN: You would have to go back to Stamford? 169

THE WITNESS: Yes, sir.

TRIAL EXAMINER BELLMAN: And then return here?

THE WITNESS: Well, gosh, if you want me to. I could give it to the bookkeeping department, and they could tell me right away.

TRIAL EXAMINER BELLMAN: You can't give a reasonable approximation? Can you give a reasonably approximate number?

THE WITNESS: Well, I was thinking about it, and I would say about 33-1/3 percent of them are contractors of that size.

TRIAL EXAMINER BELLMAN: Or smaller?

THE WITNESS: Or smaller, yes, sir.

TRIAL EXAMINER BELLMAN: And approximately two-thirds of your customers are larger than that?

THE WITNESS: Yes, sir.

TRIAL EXAMINER BELLMAN: You can say that with a reasonable degree of accuracy?

THE WITNESS: With a reasonable degree of accuracy, yes, sir.

TRIAL EXAMINER BELLMAN: Are there any other questions?

MR. SYME: No, sir.

MR. ALTIERI: No, sir.

TRIAL EXAMINER BELLMAN: The witness is excused.

(Witness excused.)

LOUIS STREGGER

170 a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Louis Stregger, 49 Lawton Street, New Rochelle, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Mr. Stregger, are you employed by Max Goldman, Inc? A. I am.

Q. What is your position? A. President.

Q. Where is Max Goldman, Inc., located? A. 49 Lawton Street, New Rochelle, New York.

Q. In what business is Max Goldman, Inc., engaged? A. Wholesale electrical supplies and lighting fixtures.

Q. Is Samuel Langer one of your customers? A. He is.

Q. Can you tell us what kind of goods are handled by Max Goldman, Inc.? A. Construction supplies, appliances and house lighting fixtures, illuminating fixtures.

Q. And wiring, I suppose? A. And wiring, yes, all kinds.

Q. What were the total annual purchases of Max Goldman, Inc., during the year 1947?

MR. SYME: Same objection.

TRIAL EXAMINER BELLMAN: I will give you the same ruling on a standing objection to the line. 171

A. $321,000.

Q. (By Mr. Altieri) What were the total annual sales of Max Goldman, Inc. during the year 1947? A. $368,000.

Q. Has your business during 1948 been substantially the same? A. Yes, it is.

Q. What percentage, if any, of the total purchase made by Max Goldman, Inc. during 1947 were made from sources outside the State of New York? A. Approximately 70 percent. No, wait a minute, I am wrong. The sales outside the State of New York is two percent.

Q. I didn't ask about the sales. I said, what percentage

of the total purchases were outside the State of New York. A. 70 percent is right, then.

Q. What percentage of the total sales made by Max Goldman, Inc. were made outside the State of New York. A. Two percent.

Q. Can you tell us the amount of purchases made from
172 you by Samuel Langer during the year 1947? A. $2,575.

Q. Can you tell us the amount of his purchases during the year 1948? A. $727.

Q. Approximately how many customers does Max Goldman, Inc. have, Mr. Stregger? A. Approximately 250.

Q. Can you tell us with reasonable accuracy and reasonable certainty approximately what percentage of the total number of customers of Max Goldman, Inc. are individuals or firms who purchase from you material not in excess of the volume of purchases made by Langer? A. Approximately 80 percent.

MR. ALTIERI: I have no further questions.

MR. SYME: No questions.

TRIAL EXAMINER BELLMAN: The witness is excused.

(Witness excused.)

JULIUS BRASSNER

173 a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Julius Brassner, Fox Island Road, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Is the Brassner Manufacturing Company a corporation, Mr. Brassner? A. Yes, sir, it is.

Q. What is its exact title? A. Brassner Manufacturing Co., Inc.

Q. Where is the Brassner Manufacturing Co. located? A. Fox Island Road, Port Chester, New York.

Q. Port Chester, New York? A. Yes, sir.

TRIAL EXAMINER BELLMAN: Will you please speak a little louder, so that we can all hear you?

THE WITNESS: Yes, sir.

Q. (By Mr. Altieri) By the way, what is your position, if any, in the Brassner Manufacturing Co., Inc.? A. President.

Q. What is the nature of the business in which the Brassner Manufacturing Co., Inc. is engaged? A. Manufacturing of lighting fixtures.

Q. Has Samuel Langer had occasion to perform any work for the Brassner Manufacturing Co., Inc.? A. Yes, 174
he has.

Q. During 1947? A. Yes, sir.

Q. And during 1948? A. Yes, sir.

Q. What was the nature of the work performed for you by Samuel Langer? A. Electrical installation.

Q. Has he done any repair work for you? A. Yes.

Q. How much did you pay Samuel Langer for services performed by him during the year 1947?

MR. SYME: I object to that on the grounds previously stated.

TRIAL EXAMINER BELLMAN: I will give you the same ruling on the standing objection to the line.

Answer the question.

A. Well, the year of 1947, he did $2,774.38.

Q. (By Mr. Altieri) How many different jobs did that represent? A. Well, it is hard to say, because there were part bills on various jobs. I would say half dozen.

175 Q. In point of time, when during 1947 were these different jobs done? A. March until November.

Q. Has Samuel Langer been the only electrical contractor to do work for you during that period? A. Yes.

Q. So that in the event of any electrical breakdown, it is Samuel Langer whom you utilize? A. Yes.

Q. How much have you paid to Samuel Langer for services performed during 1948? A. $597.53.

Q. Approximately how many jobs does that represent? A. About three.

Q. What were the gross annual sales of the Brassner Manufacturing Co., Inc. during the year 1947? A. It was over $300,000.

Q. Does any portion of that represent sales made to points outside the State of New York? A. Yes.

Q. What percentage of your sales were made outside the State of New York? A. 95 percent.

Q. Can you tell us approximately how much your sales have been for 1948 thus far? A. Well, it is hard to say.

Q. Is it running approximately the same as last year? A. Approximately the same. A little less.

Q. Are you selling approximately the same percentage to points outside the State of New York as you did in 1947? A. More so.

Q. Approximately what percentage are you now selling to points outside the State of New York? A. Well, it still would be around 95 percent, or perhaps a little more.

MR. ALTIERI: I have no further questions.

MR. SYME: No questions.

TRIAL EXAMINER BELLMAN: The witness was not asked about the amount of materials purchased. Whether that was oversight or not, I don't know. 176

Do you happen to have those figures convenient, the amount of purchases?

MR. ALTIERI: Mr. Examiner, the theory under which this witness was called is that the activities of Langer are related to and appropriate to and a necessary part of the process of producing goods for interstate commerce, and so I didn't go into the amount of goods purchased, but I would like to ask that, if I may.

Q. (By Mr. Altieri) Can you tell us—just tell us yes or no—can you tell us how much material you purchased in connection with the conduct of your business during 1947? A. Approximately $150,000.

Q. Was any part of that purchased from points outside the State of New York? A. Yes.

Q. How much? A. About 20 percent,—wait a minute, wait a minute. It is more than 20 percent. It is about 50 percent.

Q. Are your purchases for 1948 running in about the same proportion as in 1947? A. Yes.

MR. ALTIERI: I have no further questions.

TRIAL EXAMINER BELLMAN: Are there any further question of the witness?

There appear to be none, and the witness is excused.

(Witness excused.)

JEROME L. BAYER

177 a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Jerome L. Bayer, Fox Island Road, Port Chester, New York.

DIRECT EXAMINATION

178 Q. (By Mr. Altieri) Mr. Bayer, are you connected with the Curvlite Products, Inc.? A. Yes, sir.

Q. What is the exact name of that company? A. Curvlite Products, Inc., I-n-c.

Q. Are you employed by that corporation? A. I am.

Q. What is your position? A. President.

Q. In what business is the Curvlite Products, Inc. engaged? A. In the manufacture of surgical instruments and appliances.

Q. Has Samuel Langer had occasion to perform any work for that corporation? A. Yes, sir.

Q. In 1947? A. Yes, sir.

Q. And in 1948? A. Yes, sir.

Q. Now, in connection with the manufacture of these products, you have occasion to purchase material; is that correct? A. Materials, yes, sir.

Q. About how much, in toto, did you purchase during the year 1947?

MR. SYME: Objection on the same grounds previously urged.

TRIAL EXAMINER BELLMAN: I will give you a standing objection, as I did previously, to the entire line,

and I will overrule your objection. The exception is automatic. 179

A. About $150,000.

Q. What was the total dollar volume of your sales during 1947? A. Approximately $300,000.

Q. Is your business during 1948 running about the same? A. A trifle higher.

Q. Did you purchase any part of the material used by the corporation from points outside the State of New York? A. All of them.

Q. Was any part of the sales made by the corporation during the year 1947 made to points outside the State of New York? A. Practically 99 percent of the sales.

Q. Would the same figures hold true for 1948? A. Yes, sir.

Q. What kind of work has Mr. Langer done for you during the years 1947 and 1948? A. Electrical repair and installation of equipment necessary to our manufacture.

Q. When you have electrical repair work done, you summon Samuel Langer; is that correct? A. That's right.

Q. Can you tell us the total amount of payments made by you to Samuel Langer for work performed for you during the year 1947? A. $408.25.

Q. Can you give us the figure for 1948? A. There has been some repairs, but actually, I don't know.

Q. You don't have the information with you? A. I don't have 1948, no. I have 1946 and 1947.

Q. Has he done any work for you in 1948? A. Yes, sir, he has.

Q. But you say you can't tell us how much he has done for you in 1948? A. I don't have it available.

MR. ALTIERI: No further questions.

MR. SYME: No questions.

TRIAL EXAMINER BELLMAN: What type of materials, in the main, do you purchase?

THE WITNESS: Plastic only: Lucite and Plexiglass.

MR. ALTIERI: I have just one further question that occurred to me, if I may.

80 TRIAL EXAMINER BELLMAN: Yes.

Q. (By Mr. Altieri) How many different jobs does that sum that you gave us for 1947 represent, Mr. Bayer? A. Eight.

MR. ALTIERI: That's all.

TRIAL EXAMINER BELLMAN: Just as a matter of curiosity, what kind of products do you produce? Those that bend light I suppose?

THE WITNESS: Yes, sir, that's right.

TRIAL EXAMINER BELLMAN: Are there any further questions of the witness?

MR. ALTIERI: No, sir.

TRIAL EXAMINER BELLMAN: The witness is excused.

(Witness excused.)

MR. ALTIERI: Mr. Examiner, I wish to offer in evi-
81 dence as General Counsel's Exhibit No. 3 the constitution and by-laws of the Building and Construction Trades Department of the AFL, which has been presented by the Building and Construction Trades Council of Westchester County as its constitution and by-laws.

MR. SYME: Well, I think there should be added to that, "as adopted in Chicago in October, 1946."

MR. ALTIERI: Now, Mr. Examiner, we have only one copy of this exhibit.

Do you think another copy could be made available, Mr. Syme?

MR. SYME: I really don't know. I know that at one of the conferences held at my office—and I think you were there, Mr. Altieri—they ran out of the supply of these books, and no new books have been published yet.

TRIAL EXAMINER BELLMAN: If the parties are unable to supply a duplicate and will so state before the close of the hearing, I will excuse the duplicate in this case, under the circumstances. 182

MR. SYME: We will try to get it from the Local, but I don't know whether they have it, either.

TRIAL EXAMINER BELLMAN: However, I would appreciate an effort to get a copy, because with a document of this kind, a printed document, it is much better if we can have a copy.

MR. SYME: We will try, yes, sir.

TRIAL EXAMINER BELLMAN: Now, you have heard the offer. Is there any objection to this offer as described?

MR. SYME: No, sir, not as amended.

TRIAL EXAMINER BELLMAN: And as amended?

MR. SYME: I have no objection.

TRIAL EXAMINER BELLMAN: Do I understand, then, that the offer means that the Westchester Building Trades Council has no other separate constitution and by-laws?

MR. ALTIERI: Are you addressing your question to me, sir?

TRIAL EXAMINER BELLMAN: Yes. You made the offer.

MR. ALTIERI: That was produced in response to a subpoena upon counsel to produce its present constitution and by-laws, and I assume, in answer to your question, that that is the fact.

183 TRIAL EXAMINER BELLMAN: Do you contend, Mr. Syme, that there is any additional constitution and by-laws not incorporated in this?

MR. SYME: No, sir. The Westchester Trades Council has no separate constitution and by-laws, as I understand it. They work along the lines of the International. That is my understanding, subject to correction, but I think I am right. I think that was stated to Mr. Altieri in my office.

MR. ALTIERI: I think so.

TRIAL EXAMINER BELLMAN: Well, at least the present state of the record, subject to correction, would indicate that this is not only the constitution and by-laws of the Department of the AFL, but also the operating constitution and by-laws of the Westchester Building Trades Council?

MR. SYME: That is as I understand it, yes, sir.

TRIAL EXAMINER BELLMAN: If there is any correction or amendment to that, I would like to have it made before the close of the hearing.

As offered and described, then, in the offer and in the amendment, the document is admitted as General Counsel's Exhibit No. 3.

(Document referred to was received in evidence as General Counsel's Exhibit 3.)

TRIAL EXAMINER BELLMAN: Do you have anything further before the luncheon recess? 184

MR. ALTIERI: Yes, sir, just one more witness.

FRANK BONAFIDE

a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Frank Bonafide, Highland Street, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Are you employed by the Bantam U. S. Toy Company, Mr. Bonafide? A. Yes.

Q. Is that the exact title? A. It is I-n-c, not "Company." It is I-n-c.

Q. What is your position in that corporation? A. I am the president of the corporation.

Q. Where is the corporation located? A. In Port Chester.

Q. What is the exact address? A. Highland Street, just Highland Street, Abdendroth Building.

Q. What is the business of the Bantam U. S. Toy Company, Inc.? A. We manufacture soft toys.

MR. SYME: Soft toys?

THE WITNESS: Soft, s-o-f-t, cotton animals, in other words.

Q. What kind of materials do you use in connection with the manufacture of these toys? A. The raw material

185 we use mainly consists of plush and stuffing materials, which, at present, is cotton.

Q. How much material did you purchase in connection with your business in 1947?

MR. SYME: I object to this as incompetent, irrelevant and immaterial. It has no connection with the litigation here involved.

TRIAL EXAMINER BELLMAN: What is the general nature of the testimony?

MR. ALTIERI: The same as the other manufacturing concerns for whom Langer has done work.

TRIAL EXAMINER BELLMAN: Overruled. I will give you an exception.

A. About $110,000, $115,000, $120,000 of materials of all sorts. That is the raw material that we buy.

Q. (By Mr. Altieri) Is any part of that material purchased outside the State of New York, Mr. Bonafide? A. Yes, the majority of it is bought from Rhode Island, Woonsocket, Rhode Island, and some from Rocky Mount, North Carolina.

186 Q. Approximately what percentage is purchased from these sources outside the State of New York? A. 85 percent is purchased from sources outside of New York. Of course, those particular offices have offices in New York City, but their factories are located in either Rhode Island or North Carolina or Pennsylvania.

Q. Well, the shipments of raw materials, when made to you, are made from what source, do you know? A. Directly from the mills.

Q. Which are located outside of New York State? A. That's right.

Q. What were your total annual sales in 1947? A. About $250,000.

Q. Are your sales for 1948 running about the same? A. A little higher.

Q. What percentage of your sales, if any, are made to points outside the State of New York? A. I would say a little better than seventy percent.

Q. Do you know Samuel Langer? A. I do.

Q. Has he had occasion to do any work for you in 1947 or 1948? A. Several times.

Q. Has he had occasion to do any work for you in 1946? 187
A. He did.

Q. By the way, are the figures you gave us for 1946 and 1947 the same as for 1948? A. More or less. I can't remember exact, but in 1946, we did about $230,000 or $240,000, or close to $250,000. We may reach, this year, $300,000 or $350,000.

Q. Starting with the year 1946, did Samuel Langer do any work for you? A. Yes.

Q. How much did you pay him for services in 1946? A. $4,200.

Q. How many different jobs did that $4,200 represent? A. Mainly one big job. That was the year we moved from one location in Port Chester to another location.

Q. What did Samuel Langer do? A. He wired the two floors at the address I mentioned a little while ago. He wired the two whole floors for lighting and manufacturing purposes.

Q. How much did you pay Samuel Langer for services performed in 1947? A. About $200 or $300, I would say, roughly.

Q. Have you got the exact figure? A. I believe so. It is $270. That is roughly.

188 TRIAL EXAMINER BELLMAN: This is 1947?

THE WITNESS: 1947, that's right.

Q. (By Mr. Altieri) That was in 1947? A. Yes.

Q. How about 1948? A. In 1948 he done already $158.60, and we have a job that he has this year, but he can't do it until the tinsmith comes over to install certain machinery, and then when that is done, Samuel Langer will finish the job.

Q. Does Samuel Langer do all your electrical work? A. Yes, since we have been in Port Chester.

Q. Whenever you have repairs or breakdowns, you call on Samuel Langer; is that correct. A. That's right.

MR. ALTIERI: I have no further questions.

MR. SYME: No questions.

TRIAL EXAMINER BELLMAN: The witness is excused.

(Witness excused.)

TRIAL EXAMINER BELLMAN: Do you have any other witnesses that you want to call before the luncheon recess?

MR. ALTIERI: I have none in the courtroom at the moment, Mr. Examiner.

Can we recess? I apparently misjudged my time rather badly. I thought the substantial number of witnesses we had would extend throughout the day.

We have three other witnesses who are employed and whom I didn't want to have lose an entire day waiting in the courtroom. I sent them subpoenaes requiring them to appear tomorrow morning.

Now, I shall make whatever effort I can to produce them here this afternoon.

TRIAL EXAMINER BELLMAN: Would you please do 189
that?

MR. ALTIERI: Yes, sir.

TRIAL EXAMINER BELLMAN: Will that conclude the Board's case, then?

MR. ALTIERI: It will, yes, sir.

TRIAL EXAMINER BELLMAN: Well, in view of the situation you find yourself in, suppose we give you a little longer, and if you can get any or all of them here this afternoon, we can go on with them then. Otherwise, you have no other witnesses, I presume?

MR. ALTIERI: No, sir.

TRIAL EXAMINER BELLMAN: It is now one o'clock. Suppose we adjourn until 2:15 or 2:30. Would 2:30 be better for you?

MR. ALTIERI: Yes, sir.

TRIAL EXAMINER BELLMAN: All right, we will recess until 2:30.

(Whereupon, at one o'clock p.m., a recess was taken until 2:30 p. m.)

AFTERNOON SESSION

(The hearing was resumed, pursuant to recess, at 2:30 190
o'clock p. m.)

TRIAL EXAMINER BELLMAN: The hearing will be in order.

MR. ALTIERI: Mr. Examiner, we have approximately three or four more witnesses whom we tried to locate and have available to testify this afternoon, but we were un-

successful. They are under subpoena and will be in the courtroom here tomorrow morning at 10:30.

We have no further witnesses with whom to proceed today, so, under the circumstances, if it meets with your approval, we request that the proceeding be adjourned until tomorrow morning at 10:30 a. m.

TRIAL EXAMINER BELLMAN: As I understand it, you are unable to go any further now with any of the Board's case, because these witnesses are unavailable?

MR. ALTIERI: That is correct, sir.

TRIAL EXAMINER BELLMAN: And they will not be available until 10:30 tomorrow morning?

MR. ALTIERI: That's right, sir.

MR. SYME: If there is an adjournment until tomorrow morning, I ask that you close the hearing, Mr. Examiner, by the end of this week. That would give us all day tomorrow and it would give us Saturday morning, and I request that we finish by the end of the week.

191 TRIAL EXAMINER BELLMAN: Well, I can't promise that we will close the hearing at any particular time, but I have indicated to the parties that I will be glad to cooperate and try to finish the hearing this week.

I understand that the respondent will be able to go ahead with his case after the Board's case is finished; is that correct?

MR. SYME: Yes, sir, unless something unusual develops from the next witnesses.

TRIAL EXAMINER BELLMAN: Well, I will try to finish this week. I will go as far as to consider evening sessions tomorrow or Saturday in an effort to finish.

MR. ALTIERI: May I say that I don't think it will take more than three-quarters of an hour or an hour to complete my case?

TRIAL EXAMINER BELLMAN: Does the respondent want to go ahead with any witness that it wants to call at this time?

MR. SYME: We are not prepared to go ahead with any witnesses today.

TRIAL EXAMINER BELLMAN: I assumed that you were not, but if you want to put on any witnesses out of order, I am willing to consider that possibility in order to expedite matters.

MR. SYME: I don't want to put in any part of my case until the Board has completed its case.

TRIAL EXAMINER BELLMAN: All right.

With the understanding, then, that the Trial Examiner 192
will cooperate in an endeavor to complete the hearing in this case by the end of this week, so far as it is reasonable to do so, the hearing is adjourned until 10:30 a.m. tomorrow, in this room.

(Whereupon, at 2:35 o'clock p.m., the hearing was adjourned to Friday, August 6, 1948, at 10:30 o'clock a.m.)

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

In the Matter
of
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L.,
WILLIAM PATTERSON
and
SAMUEL LANGER

Case No. 2-CC-40

Port Chester, New York,
Friday, August 6, 1948

Met, pursuant to adjournment, at 10:30 a.m.

Before:

EARL S. BELLMAN, Trial Examiner

Appearances:

JAMES V. ALTIERI, appearing on behalf of General Counsel of the National Labor Relations Board.

SYDNEY A. SYME, ESQ., 201 Main Street, White Plains, New York, appearing on behalf of Respondents.

SAMUEL LANGER, 108 Purdy Avenue, Port Chester, New York, appearing for Samuel Langer.

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PROCEEDINGS

195 TRIAL EXAMINER BELLMAN: The hearing will be in order.

After duly considering the document and its duplicate marked General Counsel's Exhibit No. 2 for identification, and after considering the objections made to it, I am prepared to rule at this time.

I will overrule the objections and admit the exhibit in evidence for whatever value it may have ultimately in connection with the question of commerce which, as I take it, is the purpose of the offer?

MR. ALTIERI: That's right, sir.

MR. SYME: Respondents except.

TRIAL EXAMINER BELLMAN: Yes, you have your exception automatically, of course.

MR. ALTIERI: Here is a duplicate copy of the exhibit, sir.

TRIAL EXAMINER BELLMAN: All right, that is received.

(Document heretofore marked General Counsel's Exhibit 2 for identification was received in evidence.)

MR. ALTIERI: Mr. Deltoro, please.

NICHOLAS DELTORO

196 a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Nicholas Deltorto, 136 Pearl Street, Port Chester, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) Do you mind spelling your name for us? A. Yes, sir. My name is spelled D-e-l-t-o-r-t-o.

Q. D-e-l-t-o-r-t-o? A. That's right.

Q. Do you ever sign your name "D-e-l-t-o-r-o," Mr. Deltorto? A. No, sir, no, sir.

Q. Now, Mr. Deltorto, what is the nature of your business? A. Well, I am a carpenter and in the contracting business, doing carpenter work.

Q. Where is your office? A. 136 Pearl Street, Port Chester.

Q. Do you belong to any union? A. Not right now. I used to belong to the Carpenter's Union when I was working.

Q. How long have you been in the carpentry business? A. Oh, 23 or 24 years, I would say.

Q. When did you first join the Carpenter's Union? A. Just about 23 or 24 years ago.

197

Q. Do you have a withdrawal card at the present time? A. Yes.

Q. What is a withdrawal card, Mr. Deltorto? A. Well, it is a card that enables us to—well, I feel that it enables me to save money, inasmuch as I don't work with the tools, and I can't get around with the men that work, so I feel that there would be no sense in my having a card, and if I want to get back to work with the tools, I can always have it issued back to me.

Q. I see. That enables you to maintain some status with the union; is that it? A. That's right.

Q. How many employees do you have, Mr. Deltorto? A. Two, two carpenters.

Q. What are their names? A. Ralph Ciancia and Angelo Bova.

Q. Now, did you, Mr. Deltorto, during the early part of this year, enter into a sub-contract with the Giorgi Construction Company of Port Chester, New York, to perform carpentry work on a house on Ridge Street and Douglas Drive, in Greenwich, Connecticut? A. I did.

Q. In carrying out the work on the job, did you employ any carpenters? A. Yes.

Q. Whom did you employ? A. The men I mentioned before, Ralph Ciancia and Angelo Bova.

Q. What was the amount of your contract on this job, Mr. Deltorto? A. $7,400.

Q. Are you in a position to tell us approximately what was the total dollar volume of your business during 1947, Mr. Deltorto?

MR. SYME: I object to that as immaterial.

TRIAL EXAMINER BELLMAN: I will give you the same type of standing objection as I previously gave you to testimony of this type.

198 A. I don't know. I am afraid I can't tell you with any reasonable accuracy.

Q. (By Mr. Altieri) I see. Now, Mr. Deltorto, on or about April 16, 1948, did you have a conversation with William Patterson, the business representative of Local 501 of the IBEW?

TRIAL EXAMINER BELLMAN: Just a moment, just a moment. What was the date?

MR. ALTIERI: April 16, 1948.

A. Yes.

Q. (By Mr. Altieri) That conversation took place on the

job at Ridge Street and Douglas Drive, in Greenwich, Connecticut; is that right? A. Yes.

Q. Who was working on the job at that time? A. My 199
two carpenters were.

Q. Were any other tradesmen working on the job at that time? A. No, I don't think there were.

Q. Now, what did Patterson say to you, Mr. Deltorto, on that occasion, and what, if anything, did you say to him? A. Well, as I remember it, he told me that the electrical work had been done by—or was being done by a non-union carpenter—I mean a non-union electrician, rather, and as far as I can remember, that was all he told me at that time.

Q. Did you say anything to him? A. Yes. I told him that I didn't know who was doing the electrical work, because it seems we were away a few days when the electrical work was done, and I had no knowledge of who did it.

Q. Was any electrical work completed prior to that time that you and your men did your work? A. Yes. It seems there were a few days that we weren't on the job and, of course, while we were away, we didn't know what happened, and when we came back, the electrical work was done.

MR. SYME: The roughing? 200

THE WITNESS: Pardon me?

MR. SYME: The roughing?

THE WITNESS: The roughing, yes, of course.

Q. (By Mr. Altieri) Now, to your knowledge, did Patterson return to the job at any time after this initial conversation you told us about? A. Yes, he came back.

Q. When? A. I am not sure whether it was one or two days later.

Q. And did he say anything to you at that time? A. Well, yes. He said that the job was—he said that the electrical work was being done by a non-union organization and so I said, "Well, I don't know about that." I was still in ignorance of it.

So then he was picketing the job a few minutes later, about five minutes later or so.

TRIAL EXAMINER BELLMAN: Read the answer, will you, please?

(Last question and answer were read by the reporter.)

Q. (By Mr. Altieri) Did he say to you that he was sorry, but that the electrical job was non-union, and that he would have to do something about it? A. He did say, as I remember it—he said he was sorry, but he didn't say —I don't remember him saying that he would have to do something about it.

201 Q. No, after he finished talking to you, Mr. Deltorto, exactly what did you do after that? A. Well, I was with the men. He started to walk in the direction of his car and then, of course, I didn't follow him any further than maybe ten or fifteen feet away from me; but then some four or five minutes later, he was picketing the job with a cardboard placard that said, "This job is unfair to organized labor."

Q. What happened after that, Mr. Deltorto? A. Well, the men were on the scaffold, and we just stood there, and the men were on the scaffold, and I was down below, and I would say about five minutes later, or thereabouts, the men just come down off the scaffold and said, "Let's go," and I just got in my car and we went off.

Q. Did your men say anything to you as to why they were getting off the scaffold?

MR. SYME: I object to that as a conversation not in the presence of the respondents.

TRIAL EXAMINER BELLMAN: Overruled.

MR. SYME: Exception.

A. No, they didn't tell me—

MR. SYME: The witness has answered, "No." That is enough. I object to anything further.

TRIAL EXAMINER BELLMAN: Overruled. The witness can testify to what the man said to him.

THE WITNESS: I can't remember them giving me an explanation. I can remember, "We're going," or "Let's go," as they came down off the scaffold. 202

Q. (By Mr. Altieri) Mr. Deltorto, shortly after the events as to which you are now testifying, you were questioned by agents of the National Labor Relations Board, were you not? A. Yes.

Q. And at that time you furnished them with a statement describing what occurred on the job, did you not?

A. That's right.

Q. And that was considerably closer to the time of the events concerning which you are now testifying than the present date; is that right? A. That's right.

Q. Now, do you believe it would refresh your recollection concerning exactly what transpired on that date if you were shown a copy of the statement that you furnished to the Board's agents? A. Yes, perhaps it would.

Q. Now, I show you this copy of the affidavit which you swore to on or about the 4th day of June, 1948, and I ask you to look at it and read that statement and tell us whether that refreshes your recollection as to exactly what happened. You may take all the time you want, Mr. Del-

torto. We are trying to get the accurate facts and truth in the record. A. I am trying to give you that. All we want to do is to touch all the bases. We don't want to take any sides.

203 Q. All right, sir. I understand. You may do that, if you wish. A. No, sir, I don't think it is necessary.

Q. All right. Now, Mr. Deltorto, you have testified that after Patterson had picketed the job for a little while, your men left the scaffold. Can you tell us now what, if anything, your men said to you at the time they left the scaffold?

MR. SYME: I object to that as incompetent, not in the presence of Patterson.

TRIAL EXAMINER BELLMAN: I will overrule the objection.

MR. SYME: Exception.

A. No. I feel that I would be guessing at what I would say right now, because I don't think very much was said, if anything. If anything, one of the fellows said, "It's too warm. We ought to go home," or something like that.

Q. Did your men tell you that they would be liable to a fine if their delegate found them working with non-union labor and didn't leave the job?

MR. SYME: I object to that as incompetent, not said in the presence of Patterson.

TRIAL EXAMINER BELLMAN: Overruled.

A. I think they would be better able to tell you than I
204 would.

Q. (By Mr. Altieri) I understand that, Mr. Deltorto, but I am trying to find out now whether you have any recollection of that at the present time. A. No, I don't think

there was any mention made of that, in all fairness to every one concerned. I can't truthfully say that they said anything like that.

Q. Then, after your men quit work, Mr. Deltorto, just what did you do after that? A. Then I went home—not directly home, but I went home at noon time for lunch, and I called up Louis Giorgi, the general contractor, and I told him—

MR. SYME: I object to any conversation over the telephone with Giorgi as incompetent, not being in the presence of Patterson.

TRIAL EXAMINER BELLMAN: Overruled.

THE WITNESS: I told him that I understood that the electrical contractor is non-union, and I said, "Of course, you know we are union." So he said, "All right, I'll have that straightened out, and I'll let you know when everything is straightened out." He did, several days later, and he told me there was no trouble on the job, and we were back working.

Q. (By Mr. Altieri) When you went back to work, Mr. Deltorto, do you know who the electrical contractor was who was to complete the job? A. No. 205

Q. Do you know whether it was a union electrical contractor who was to complete the job? A. No. We saw no contractor there when we were there. Louis Giorgi is the general contractor, and as the general contractor, he took care of that.

Q. But you were told that whatever trouble there was was straightened out, and you were to go back to work? A. Well, he didn't say, "Go back to work"; but he said, "The trouble is straightened out."

Q. And then you and your men went back to work; is that correct? A. Yes.

Q. Mr. Deltorto, do you happen to remember what the placard said, the placard that Mr. Patterson carried when he picketed the job? A. Well, there was some small letters in it, and we were maybe thirty feet away or so, and we couldn't read the small letters, but we could read the big letters, and it said, "This job is unfair to organized labor." I would say it was maybe from here to that wall over there, perhaps a little further away.

206 Q. Your best recollection is that it said, "This job is unfair to organized labor?" A. It said that, and there were some smaller letters, some small print, that I couldn't read from that distance.

Q. Now, you have been engaged either as an employer or employee in the construction industry for 23 years or more, I believe you told us? A. That's right.

Q. During how many of those years did you have a card in the Carpenter's Union, Mr. Deltorto? A. Oh, fifteen or sixteen years—maybe seventeen.

Q. Are you familiar with the customs and practices of the Carpenter's Union in the construction industry? A. Well, I have been—yes, that is, the principal ones. I have been a sort of poor member. I don't attend very many meetings.

Q. You say you are familiar with the principal ones? A. Well, yes, I would say the ones that we would call important.

Q. Can you tell us what is the custom and practice of the Carpenter's Union in cases where carpenters are working on a job that is picketed and declared unfair by one of the locals belonging to the Building and Construction Trades Council in the area?

MR. SYME: I object to that on the ground that no proper foundation has been laid, that the witness is not qualified to answer.

TRIAL EXAMINER BELLMAN: Overruled.

MR. SYME: Exception.

A. I have never worked on a job before where we had this trouble. Usually the general contractor, who knows the story, generally deals with a certain organization that he has built around himself. The general contractor generally has one or two carpenter contractors to whom he submits his plans for figures and bids, and if one or two are awarded the job, he goes right ahead. As I say, I have never worked on a job like this before. 207

Q. (By Mr. Altieri) What is your understanding, Mr. Deltorto, as to what would happen or what would be done by the Carpenter's Union in the event that carpenters continued to work on a job that was declared unfair and that was picketed by one of the locals?

MR. SYME: I object to that question on the ground that it calls for a conclusion of the witness. It does not call for a fact, but calls for this witness' conclusions, and is therefore hearsay.

TRIAL EXAMINER BELLMAN: Overruled.

MR. SYME: The question is not what is the practice, but what is the—

TRIAL EXAMINER BELLMAN: Let me ask you this first. What word did you use in your question to the witness? Was it "understanding"?

MR. SYME: May we have the question read?

TRIAL EXAMINER BELLMAN: All right, read the question. (Pending question read.)

MR. SYME: It simply calls for his understanding, not for custom and practice.

208 TRIAL EXAMINER BELLMAN: Reframe your question.

Q. (By Mr. Altieri) Do you know, Mr. Deltorto, what the Carpenter's Union would do in the event that carpenters were working on a job that had been picketed and declared unfair by one of the locals of the Building Trades Council, and continued to work on the job?

MR. SYME: I object to that on the same grounds. The witness has testified that he is not familiar with the practices, that he was never on a job like this before. Certainly he is not competent to testify to that.

MR. ALTIERI: The witness did not so testify.

MR. SYME: Yes, sir, it is right down there. The stenographer has taken that down on the record.

TRIAL EXAMINER BELLMAN: I will overrule the objection. You have an exception. The exception is automatic.

MR. SYME: Will your Honor instruct the witness that if he doesn't know about such a practice, he may say so?

TRIAL EXAMINER BELLMAN: If the witness has any question about the question or does not know, he may so state.

MR. SYME: I ask your Honor to instruct the witness that if he is not familiar with the —

MR. ALTIERI: Now, Mr. Examiner, I object to this intimidating of the witness with respect to an answer —

MR. SYME: He said that he was never on a job like this before —

TRIAL EXAMINER BELLMAN: Gentlemen, gentlemen. Let us not have any more of this wrangling. The

record is complete. You have argued it past the point where we are getting any benefit from it. The witness may answer to the best of his ability.

MR. SYME: Exception.

THE WITNESS: I don't know. I seem to be squirming 209
a little bit, but I think that there is some one in authority that should be able to answer it better than I can.

Q. (By Mr. Altieri) Mr. Deltorto, the question is not who can answer it better, but do you know? Can you answer the question? A. Well, I was never in that fix before.

I know that there is a city ordinance that would fine me for overtime parking or speeding, or something like that, but I don't know about an ordinance that can fine you or that can excuse you for being ignorant of the ruling, or something like that. I was never caught working or never worked on a job with non-union men, so I was never fined or reprimanded for anything like that, so I don't know how to answer that.

Q. I take it that your answer is that you don't know 210
what the union would do about that? A. Well, I would just be guessing.

Q. In answer to my question, your answer is that you don't know what the union would do about it; is that correct? A. Yes. I would go along on that assumption, that I am not sure. I couldn't definitely say whether I would be bawled out or fined. I don't know.

Q. Do you have an opinion as to what would happen to you under the circumstances?

MR. SYME: I object to what his opinion is as immaterial.

MR. ALTIERI: I would like to be heard on that, Mr. Examiner.

I think that in view of the fact that we have a situation here where the circumstances under which the picketing occurred, the general background against which the picketing was done, contemplating anticipated action on the part of the employees then working on the job, that it is directly relevant to probe into the ideas of this man who has been in the industry for 23 years, his ideas as to what would happen. I certainly believe that that is relevant.

MR. SYME: His belief is not binding on the respondent. They have to show the existence of a practice or custom.

TRIAL EXAMINER BELLMAN: Will you gentlemen please follow one simple rule? Will you please speak one at a time, and when you are through, will you sit down?

211 MR. SYME: Well, I was addressing an objection to your Honor.

This witness has testified that he was never through such an experience. Now, how can he express his opinion about something that he doesn't know about?

He is calling upon him to express an opinion about something which he says or which he has testified to already that he doesn't know about. How can he have an opinion about something on which he knows nothing?

THE WITNESS: Can I say something?

TRIAL EXAMINER BELLMAN: Just a moment.

MR. ALTIERI: I am not suggesting, in answer to Judge Syme's objection, that the union is bound, to use his language, in any way; nor am I suggesting that the union cannot rebut it in any way it sees fit; nor am I suggesting that this evidence tends to establish such practice. I do, however, say that it is relevant to ascertain the widespread frame of mind and the current belief of employees working

under the circumstances. That forms part of the res gestae, and it tends to explain and it makes relevant the characteristics of the picketing, in so far as the intention and expectation of the party picketing is concerned, and the exact intent with which the picketing was conducted and what it sought to accomplish. I say that under those circumstances, the frame of mind and opinion and belief of the persons affected, under the circumstances, is material to the issues. This is relevant. It may be rebutted by other testimony, but we should be permitted to have an answer, in view of the fact that he has been in this industry for 23 years.

MR. SYME: Yes, he has been in the industry for 23 212
years, and he has never had a similar experience. How can he have an opinion under such circumstances?

TRIAL EXAMINER BELLMAN: I believe you repeated that point three times already.

If there are any new points that either of you want to make, you may make them now.

I believe that this matter may have some relevancy on this particular complaint, and therefore I am going to overrule the objection.

You have an exception on that.

Q. (By Mr. Altieri) The question now is, Mr. Deltorto, what is your opinion as to what would happen in the event that you and your carpenters continued to work on a job after it had been picketed and declared unfair by one of the locals belonging to the District Trades Council?

MR. SYME: I object to that question on the grounds previously stated.

TRIAL EXAMINER BELLMAN: Overruled. Your exception is automatic.

A. Let me answer that this way: First of all, I have nothing to fear, because I don't work and I have never been—there is nothing that could be referred to me. I am just an employer and I hire these fellows, and I don't pay dues in the union or anything like that. I am just like any one else in this room. I don't pay dues to the union. But it would seem to me that some union official could answer your question. I mean some union official could tell you the score.

Q. Please answer the question, Mr. Deltorto. A. No, I can't.

Q. I am asking for your opinion, sir. The question is quite clear. It is not a question of whether we can address a question to a union official. The question is addressed to you now.

MR. ALTIERI: Mr. Examiner, may I, with your permission, interpose one question, and hold this question in abeyance for a moment?

TRIAL EXAMINER BELLMAN: If it is to clarify the
215 question.

MR. ALTIERI: Yes, sir.

TRIAL EXAMINER BELLMAN: Go ahead.

Q. (By Mr. Altieri) Did you express an opinion on that subject in the affidavit you swore to on the 4th day of June, 1948? A. I expressed an opinion, or, at least, I made a statement chiefly for my men, not for me. There is nothing that I have to fear or worry about, as I said, and I believe it was with relation to the Taft-Hartley Law—

Q. Will it refresh your recollection if you look at exactly what you said? A. Something with respect to the Taft-Hartley Law, yes, sure, that's what I said.

Q. Is that a true statement there? A. Yes.

Q. Well, now, will you answer the question that has been put to you, as to your opinion? A. Well, like I 213
told you there, I haven't been in this situation before, but I have heard tell that prior to this Taft-Hartley Law, the Taft-Hartley Law that they talk about, a man who worked on the job, insisted on working on a job that was unfair, on a mixture of union and non-union men, would be subject to a fine or lecture or bawling out, or something, but every one that reads the papers, it seems to me, defines the Taft-Hartley Law in his own way, and I have heard say that a fellow can work on the job and another fellow says that they can't. So if the men knew what the score was, the men would be only too glad to go along with it, but they don't know.

Q. What do you mean by your statement that if the men knew what the score was, they would be only too glad to go along? A. Well, if some one came out of Washington and explained to the men what was reasonable under the law—I mean most men are betwixt and between.

Q. Do you mean that if some one explained that to them, that they would work if the Taft-Hartley Act permitted it? A. Well, all the men want to touch all the bases. They want to do whatever is right.

Q. You don't know whether the Taft-Hartley Act affects that situation one way or another, do you? A. Well, every time I read it, I get a different idea.

Q. You have read it and you have tried to reach some conclusion about it? A. Yes, I read it, but I can't.

Q. Now, referring to the Taft-Hartley Act, I would like 214
to make that clear, that is, that you don't know whether the Taft-Hartley Act requires you to modify your opinion that the men would be subject to fine if they kept on working under those circumstances; is that correct?

MR. SYME: I object to that as calling for a conclusion of the witness.

TRIAL EXAMINER BELLMAN: Overruled.

A. Well, in the past, years ago, in the 23 or 24 years that I am in this business, I guess that half of that time I have spent in a supervisory capacity, running jobs, and, of course, you hear varied opinions and arguments; but I do know that on all jobs that I have ever worked on—and I have traveled around quite a bit—it was always union electricians, union carpenters and union masons, and we
216 all got along very well; and I can't truthfully say that I know of any one who was fined—although I do hear talk of some one who was fined, and while I can't point out the fellow, I have heard of it.

Q. You have no specific illustration on the point? A. Well, that could go back twelve or fourteen or fifteen years ago.

MR. ALTIERI: I have no further questions.

MR. SYME: I have no questions.

Q. (By Trial Examiner Bellman) Were you a member of and do you hold a withdrawal card from Carpenters' Local 543? A. Yes.

Q. That is the Local? A. That's right.

TRIAL EXAMINER BELLMAN: The complaint alleges that Electricians' Local 501 is a member of the Greenwich Building Trades Council, but it is silent as to whether Carpenters' Local 543 is also a member of the Greenwich Building Trades Council.

MR. ALTIERI: I was under the impression that that was alleged.

TRIAL EXAMINER BELLMAN: Well, see if you can find it.

MR. ALTIERI: Paragraph 10, sir.

TRIAL EXAMINER BELLMAN: Paragraph 10.

MR. ALTIERI: Yes, sir.

TRIAL EXAMINER BELLMAN: Well, that is about 217
the Westchester County Building and Construction Trades Council, isn't it?

MR. ALTIERI: Well, that is the Building Trades Council to which these two Locals belong.

TRIAL EXAMINER BELLMAN: There is an allegation in paragraph 11 that Local 501 belongs to the Greenwich Building and Construction Trades Council.

MR. ALTIERI: Well, my understanding is that this local does not belong to that Council.

Q. (By Trial Examiner Bellman) Do you know whether Local 543 is a member of the Greenwich Council? A. No.

Q. But it is a member of the Westchester Council? A. Yes, sir.

Q. Local 543 does work outside of the State of New York? It goes over to Connecticut? A. Well, the carpenters do, yes.

Q. That is what I mean. A. Yes, they go into Greenwich and Stamford and do work up there, but we have to —we don't have to, but we do employ some of their men for the job, if the job is big enough.

Q. There is a Carpenters' Local, then, in Connecticut, that is affiliated with the Greenwich Building Trades Council? A. Well, each district has within it a local, a Carpenters' Local, and, of course, that district takes in a certain area. The Port Chester Local, for example, takes in an area as far as Harrison. Then Mamaroneck takes in part of Harrison and part of Larchmont.

218 Q. Is Harrison in Connecticut? A. No, sir, in New York. It is just below Rye.

Q. Does this house on which you were working, the house involved in this case, fall in the area which your Carpenters' Local normally covers? A. No, sir.

Q. You were working in an area which was not normally in your area, but which you work in from time to time? A. That's right. We were working in an area covered by the Greenwich Local or Greenwich Business Agent.

Q. But it is a practice which is acceptable to all concerned for carpenters in your local to work up there from time to time. A. Yes, we have worked up there, and they have worked down here, too.

TRIAL EXAMINER BELLMAN: All right, that clears that up. Are there any other questions of the witness?

MR. ALTIERI: No, sir.

MR. SYME: No, sir.

TRIAL EXAMINER BELLMAN: The witness is excused. (Witness excused.)

RALPH CIANCIA

219 a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Ralph Ciancia, 413 Ward Avenue, Mamaroneck, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) What is your occupation, Mr. Ciancia? A. Carpenter.

Q. Are you employed by Nicholas Deltorto? A. Nicholas Deltorto, that's right.

Q. Do you belong to the Brotherhood of Carpenters and Joiners of America, Local 543, affiliated with the AFL? A. Yes, sir.

Q. How long have you been a member of that union, Mr. Ciancia? A. On and off, for about 16 years.

Q. Now, you were employed by Mr. Deltorto in working on the job at Ridge Street and Douglas Drive, in Greenwich, in the State of Connecticut, were you not? A. Yes, sir, I was.

Q. When did you begin working on that job Mr. Ciancia, can you tell us, approximately? A. I have no idea. 220

Q. Can you give us an approximate date? A. I don't know. It was around April, I guess.

Q. Around April of what year? A. 1948.

Q. 1948? A. Yes, sir.

Q. After you commenced working on this job, did you have occasion to see William Patterson, Business Agent of Local 501, on the job? A. Yes, I saw him.

Q. When did you first see him, can you tell us? A. Well—

Q. How soon after you started to work? A. I would say about a month.

Q. Now, did he speak to you when you came to the job? A. I don't remember whether he—he spoke to me once, but I don't remember whether it was the first or second time that he was around.

Q. Either the first or the second time, he spoke to you? A. Yes, either the first or the second time.

221 Q. Now, when was the second time that he came to the job? How soon was it after the first time? A. Well, he came one day, and probably the next day or the day after. I don't remember.

Q. Is it your testimony that on one of those two occasions he spoke to you? A. Yes.

Q. What did he say to you? A. He asked if we knew the job was non-union.

Q. Did he say anything else? A. No.

Q. Did you say anything to him? A. Yes. I said that I didn't know there were non-union men on the job.

Q. Did anything else happen on that occasion? A. Yes. After that, he spoke to Mr. Deltorto, and—

Q. When you say "after that," do you mean the same day or some time after? A. No, right after that, right after he spoke to me—no, pardon me. It was sometime after that that he spoke to Mr. Deltorto.

Q. Do you mean that it wasn't the same day? A. I don't remember whether it was that day or not. And then he put a sign on him and walked outside.

222 TRIAL EXAMINER BELLMAN: Do you know whether the day that Mr. Patterson spoke to you was the same day that he put the sign on?

THE WITNESS: I think it was. I am not sure.

Q. (By Mr. Altieri) What did that sign say, do you know, Mr. Ciancia? A. No. I did know, but I don't remember now. I mean I read it, but I don't remember exactly what it said now.

Q. Now, let's see if this will be of any help to you. After these occurrences concerning which you have testified

took place, were you questioned by an agent of the National Labor Relations Board? A. Do you mean on the job?

Q. On the job or anywhere? Were you questioned by an agent of the National Labor Relations Board? A. Well, who represents the National Labor Relations Board? I spoke to plenty of men.

Q. You spoke to several who said they were from the National Labor Relations Board? A. No, no.

Q. Did you ever speak to any one who said he was from the National Labor Relations Board? A. May I ask a question?

Q. Yes. A. Are you from the National Labor Relations Board?

Q. Yes. A. Then, yes. 223

Q. You spoke to me? A. Yes.

Q. And you spoke to other people, but you don't know whether they were from the National Labor Relations Board? A. That's right.

Q. And you told what you knew happened? A. Yes.

Q. Did you sign an affidavit? A. Yes.

Q. Did that affidavit state exactly what you knew about the job and what happened? A. As far as I can remember, yes.

Q. That affidavit was signed June 4, 1948? A. Somewhere like that.

Q. Was your recollection of the facts any clearer then than it is now? A. Oh, yes, very much.

Q. Well, would you read over that affidavit and tell us whether that refreshes your recollection. A. Yes.

Q. Does reading that affidavit refresh your recollection, Mr. Ciancia? A. Yes, it does.

Q. Can you tell us now what the sign said, the sign that Mr. Patterson carried when he picketed the job? A. Well, it said, "This job is unfair to organized labor," and it also, as I stated there, had a number on it, but I don't remember what it was.

224 Q. Can you tell us now about when it was that Patterson picketed the job? A. About June 16th, I guess.

Q. Now, of course, you signed this affidavit on June 4th, did you not? A. Yes.

Q. Do you mean June 16th or some earlier date? A. I don't remember. I thought I read June 16th on there. I can't remember the date. April 16th. I am sorry, April 16th.

Q. What is your answer now? When was it? A. April 16th.

Q. It was about April 16th; is that correct? A. Yes.

Q. Now, when Patterson picketed the job, what did you do? A. Well, I spoke to Angelo Bova and I asked him—well, we talked about it—

MR. SYME: I object to any conversation between this gentleman and Bova not in the presence of Patterson as not binding on the respondents.

TRIAL EXAMINER BELLMAN: Overruled.

MR. SYME: Exception.

225 THE WITNESS: I spoke to Angelo Bova, and I asked him what he thought we should do, and he was doubtful whether to go or not, so I said, "Let's go," and we left.

Q. (By Mr. Altieri) Can you tell us why you left?

MR. SYME: I object to that as calling for a conclusion of the witness.

MR. ALTIERI: I want the conclusion of the witness. I am asking for his reason, his intention, why he left the job.

MR. SYME: And that is what I object to.

TRIAL EXAMINER BELLMAN: Overruled.

MR. SYME: Exception.

A. Well, previous to this Taft-Hartley Act, I knew that we were subject to fine if we were found working on a job with non-union men. What the union does now, I don't know. I always look for the least excuse, anyway, to get off the job, because I have plenty of work of my own to do at home.

Q. (By Mr. Altieri) If Mr. Patterson had not picketed the job, you would have kept on working, wouldn't you?

MR. SYME: I object to that.

TRIAL EXAMINER BELLMAN: Overruled.

A. Probably. I don't know. I walk off the job at any time of the day anyway. I have a lot of work to do myself.

Q. What time did you start working that day? A. The usual time, 8:30.

Q. What time did Patterson picket the job? A. In the morning, I think. Yes, in the morning. 226

Q. Up until the time he picketed the job, you had worked? A. Pardon me?

Q. I say, you had worked up until the time he picketed the job? A. Yes.

Q. So that any work you had to do at home had nothing to do with your leaving the job, did it? A. No.

MR. ALTIERI: I have no further questions, sir.

MR. SYME: No questions.

Q. (By Trial Examiner Bellman) Have you ever been informed by your union of any change in practice relative to fines for working with non-union men since the Taft-

Hartley Act was passed? A. No, sir, I have never been informed to that effect. I only know what I have read.

MR. SYME: What is that?

THE WITNESS: I only know what I have read. I know that there were some changes made, but what they were, I don't know.

TRIAL EXAMINER BELLMAN: Are there any other questions of the witness?

MR. ALTIERI: No, sir.

TRIAL EXAMINER BELLMAN: The witness is excused. (Witness excused).

MR. ALTIERI: Angelo Bova.

ANGELO FRANK BOVA

227 a witness called by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

TRIAL EXAMINER BELLMAN: Please state your full name and address for the record.

THE WITNESS: Angelo Frank Bova, 225 Mamaroneck Avenue, Mamaroneck, New York.

DIRECT EXAMINATION

Q. (By Mr. Altieri) What is your occupation, Mr. Bova? A. I am a carpenter.

Q. Do you belong to Carpenters' Local 543 of the AFL? A. Yes, sir, I do.

Q. How long have you been a member of that union? A. Oh, about 20 years. October, 1928, to be exact.

Q. And your employer is Nicholas Deltorto. A. That's right.

Q. Now, were you employed, Mr. Bova, on the job at Ridge Street and Douglas Drive, in the town of Greenwich, Connecticut? A. Yes, sir, I was.

Q. And you were working there for Nicholas Deltorto, your present employer? A. Yes, sir.

Q. Do you remember an occasion when William Patterson, the business representative of Local 501 of the IBEW, appeared on the job? A. Yes, I do.

Q. Could you tell us approximately when that was? A. Between the 14th and 16th of April some time.

Q. Of 1948? A. 1948. 228

Q. Will you tell us what happened? A. Well, Ralph Ciancia and I were working up on the scaffold on the south side of the house, and I heard some one talking and I turned around and it was Mr. Patterson talking to my employer. He said something about unfair. I don't know what it was, about a non-union electrician being employed, and it was so low a tone that I couldn't really hear it, because I was up on the scaffold, and I didn't hear everything that went on between the two; but a few minutes later, I happened to look off on the side and I saw some one walking up and down with a placard on, and I didn't know what it said, and so I said to Ralph, "Let's go down and see what it's all about;" and we got off the scaffold and went down to where Mr. Patterson was walking up and down and the placard said, "Unfair to organized labor," and "501" or something like that; and he went back and I said, "I don't know what to do." I said that to Ralph, and he said, "There's only one thing to do. Let's go home." Well, we had plenty of work to do anyway, and we quit right then and there.

Q. Can you tell us why you quit?

MR. SYME: I object to that as incompetent, irrelevant and immaterial and calling for a conclusion.

TRIAL EXAMINER BELLMAN: Overruled.

229 MR. SYME: Exception.

A. Well, I think there is something in our constitution that says something about working with non-union men, that you are supposed to quit work, or something of that sort. I don't know what paragraph it is or where, but it is in that book. It is probably in that one that you have right there, if you will look it up. I don't know what number it is, but it is in there somewheres, that tells us just what's what concerning that.

Q. Was that your reason for quitting work?

MR. SYME: We object to that.

TRIAL EXAMINER BELLMAN: Overruled.

MR. SYME: Exception.

A. Well, we took it upon ourselves, I believe, to just walk off. That's the way it really turned out. I helped Ralph out on his house, you see, and I do a lot of work for ex-GI's, and I thought it was as good a time as any to take off.

Q. This provision in the constitution that you referred to, does it say anything about fines if you keep on working on a job which is picketed and which has been declared unfair? A. I don't know. You see, I didn't really attend many meetings—

Q. You don't know whether it contains such a provision or not? A. I really don't know.

Q. Was your reason for leaving the job that you thought this provision of the constitution might contain such a clause?

MR. SYME: I object to that as incompetent and as calling for a conclusion.

MR. ALTIERI: I will ask the Examiner to permit to lead the witness a little more than normally seems appropriate.

TRIAL EXAMINER BELLMAN: Well, reframe that question.

Q. (By Mr. Altieri) Mr. Bova, you were interviewed by me and some other persons about what happened on the job shortly after these occurrences took place, were you not? A. Yes, sir, about a week or two after, I believe.

Q. And you gave us a statement, did you not? A. That's right.

Q. An affidavit was prepared which you signed and swore to? A. Yes, sir.

Q. Was that affidavit true and correct in all respects? A. Yes, sir.

Q. Now, that affidavit was signed on a date which was much closer to the occurrence than the present date, wasn't it? A. That's right. 231

Q. Would it refresh your recollection if I showed you that affidavit, Mr. Bova? A. Can I tell you something?

Q. Yes. A. I am funny about these things. Where is my—

Q. The original affidavit is in the District Court. Now, is that a copy of the affidavit? A. I don't know. I told you before—

Q. Is it your answer that this is a copy of the affidavit?

A. I don't know. I really don't know. I am stubborn that way, but I guess I got to be. Here, I will put you out of that trouble. I have a copy right here.

Q. Do you have a copy? A. I have my own copy.

Q. All right. Would you look at that, please, Mr. Bova? Is that a copy? A. That is a copy of exactly what I signed.

Q. Will you look at that and tell me if that refreshes your recollection? A. I will tell you what I signed. It says here that being union members, we quit the job, because we were liable to a fine of some sort.

MR. ALTIERI: I have no further questions.

CROSS-EXAMINATION

232 Q. (By Mr. Syme) You never talked with Patterson that day, did you. A. Concerning what?

Q. The day that he came to the job with the sign? You didn't talk to him personally, did you? A. About what?

Q. About anything? A. I don't remember talking to him. I may have spoken to him while he was walking up and down with the placard.

Q. I don't know what you may have done. Did you talk to him? A. I don't remember.

Q. Do you remember his saying anything to you? A. No, sir.

Q. He didn't say anything to you about quitting the job, did he? A. No, sir, he didn't. No one told us anything about quitting the job.

Q. No one, neither Patterson no anybody else? A. No sir. We just took it upon ourselves, like I said before.

Q. Did anybody make any threats to you? A. No, sir, none at all.

Q. You were not told that you had to leave the job, were you? A. No, sir, we weren't told that we had to leave the job.

Q. Now, in that paper that you signed— A. Yes, sir. 233

Q. Will you look at that, please, the one that you have in your hands? A. Yes, sir.

Q. Look at the second or third line from the bottom and see if you signed the paper saying this: "I don't know if there is anything in our constitution or by-laws which says we can't work with non-union labor." A. Yes, but I also made a statement up here—

Q. Now, just answer that question. A. Well, one contradicts the other.

Q. Do you find in that statement what I just said? A. Yes, sir, it's there.

Q. And was it there when you signed it? A. Yes.

Q. Was it true? A. In a way.

Q. Did you ever read the constiution? A. Yes.

Q. Is that in there? A. Yes.

Q. Will you show it to me? A. Here it is, here.

Q. Is that the one that you read from? A. Well, I read from one of these. I don't know which one it is.

TRIAL EXAMINER BELLMAN: Will you identify for 234
the record the caption on the face of that booklet?

MR. SYME: It reads, "Constitution and by-laws of the United Brotherhood of Carpenters and Joiners of America, in effect January 1, 1947."

TRIAL EXAMINER BELLMAN: Now, take that. Is that the one you want the witness to have?

THE WITNESS: Could I say something?

TRIAL EXAMINER BELLMAN: Yes.

THE WITNESS: This may not be the same copy that I read.

Q. (By Mr. Syme) Well, if it is not the same copy that you read, tell us. A. Can I ask you a question?

Q. What is that? A. Can I ask you a question?

Q. Yes. A. This is strictly off the record.

TRIAL EXAMINER BELLMAN: No, it will have to be on the record.

235 THE WITNESS: Well, supposing I get out of the chair here?

TRIAL EXAMINER BELLMAN: No, you are on the witness stand. You may ask any questions you want to, but you are on the witness stand now and your testimony is being recorded. Can you now, from your examination of that booklet, tell us whether or not it is the one that you read previously?

THE WITNESS: No, it wasn't a copy like this.

TRIAL EXAMINER BELLMAN: You say it wasn't like that?

THE WITNESS: I don't think it was, no.

TRIAL EXAMINER BELLMAN: All right, proceed.

Q. (By Mr. Syme) Well, now, just to be sure, Mr. Bova, you signed this affidavit on June 4, 1948, the one you have a copy of? A. That's right.

Q. Now, at that time you signed that affidavit, and you were trying to tell the truth, were you not? A. Yes. Here it is right here.

Q. I say that you were trying to tell the truth? A. Yes.

Q. You signed that affidavit for Mr. Altieri or some one else in his office? A. Some one else. I don't think he was present at that time.

Q. Well, the affidavit was drawn down in Mr. Altieri's office, was it not? A. I believe so. I don't know whether it was drawn there. I can tell you where I signed it. I signed it in the car. I was up on the job.

Q. You signed it up on the job? A. Well, I would say 236
on the job, because it was close by.

Q. All right. Well, at the time you signed it, you say that you were trying to tell the truth? A. That's right.

Q. You were trying to tell the truth when you said then: "I don't know if there is anything in our constitution or by-laws that says we can't work with non-union labor"? A. That's the way I wrote it, and that's the way I signed it.

MR. SYME: All right, that's all.

REDIRECT EXAMINATION

Q. (By Mr. Altieri) Mr. Bova, this affidavit was framed pretty much in the language that you insisted on, wasn't it? A. That's right.

Q. When Mr. Syme questioned you about the last three sentences in the affidavit, you started to refer to something above. Will you tell us what it is that you think casts light on the statement that he was questioning you about? A. Well, I said something about, "being union members, we didn't want to face a fine."

Q. Is that what you want to tell us that you wanted to 237
tell Mr. Syme before? A. Yes. One contradicts the other. I don't know how come, but that's what I did sign.

Q. Is it true that being union men, you didn't want to face a fine? A. I said that we quit work so that we could catch up on our own work.

Q. Well, was one of your reasons that you didn't want to face a fine? A. Well, speaking one way, like I said at the end, I don't know what it's all about.

Q. You didn't know whether you would be subject to a fine? A. I didn't know.

Q. Is that right? A. Yes.

Q. You just didn't know whether you would be subject to a fine or not? A. That's right.

Q. And you didn't want to run the risk of being subject to a fine; isn't that right? A. That's right. Because this thing is turning out to be worse than I thought, in my opinion.

TRIAL EXAMINER BELLMAN: I assume that on those affidavits, the respondents have been aware of their contents, since, from the questioning, they were apparently affidavits filed with the Court, and you have had copies and you know what they contain?

MR. SYME: Yes, they served copies on us.

238 TRIAL EXAMINER BELLMAN: All right. I just wanted to be sure that you knew the contents. Does anybody want to offer the affidavit?

MR. SYME: I have used it for such purposes as I cared to use it.

TRIAL EXAMINER BELLMAN: All right, as I say, I just wanted to make sure that the affidavit was available to the respondent and that you knew what was in it.

MR. SYME: Yes, sir, certainly.

TRIAL EXAMINER BELLMAN: There appears to be no desire to introduce any of these affidavits. Is there anything further of this witness? (No response.)

TRIAL EXAMINER BELLMAN: The witness is excused. (Witness excused.)

MR. ALTIERI: I have no further witnesses. I am prepared to rest, but before doing so, I would like to make a motion to conform the pleadings to the proof.

MR. SYME: We object to that on the ground that we are surprised.

TRIAL EXAMINER BELLMAN: Will you explain the nature of that motion?

MR. ALTIERI: I find that the testimony that has been elicited has some discrepancies with respect to names, and so forth, in the pleadings. For instance, Nicholas Deltorto is spelled, "D-e-l-t-o-r-o." We have it from him on the witness stand that his name is actually spelled, "D-e-l-t-o-r-t-o." And there are other things of that kind. 239

MR. SYME: So far as correcting names is concerned, I have no objection.

TRIAL EXAMINER BELLMAN: Does this motion go to the conforming of the pleadings to the proof, that is, both as to the General Counsel's complaint and the respondent's answer, as far as minor matters and things of that sort are concerned, that is, corrections of names and dates, and so forth? Is that your purpose?

MR. ALTIERI: Well, Mr. Bellman, it is broader than that. I move to conform the pleadings to the proof under the authority of the Rules of Civil Procedure, which are formally adopted in the National Labor Relations Act as the rules governing proceedings of this character; and I move to conform the pleadings to the proof so that whatever evidence tends to support and make out a claim under that Act, that the complaint be considered amended accordingly.

MR. SYME: Well, we object to that on the ground of surprise. We were brought here to answer the phraseology of the complaint as served. There has never been any notice of intention to amend, nor has there been any amendment. We were brought in to meet this specific complaint, and we object to any amendment at this time which would enlarge the charges against the respondents.

MR. ALTIERI: I would like to add and qualify my statement to this extent: That there is no intention on the part of the General Counsel to charge respondents with violations other than 8(b)(1)(A) and 8(b)(4)(A), which are the charges in the complaint.

MR. SYME: We still press our objection.

TRIAL EXAMINER BELLMAN: I will grant the motion in the limited sense in which it was made, namely, to correct minor defects in the pleadings, namely, corrections in names and dates, and I understand that the respondents do not object to that?

MR. SYME: We don't object to that.

TRIAL EXAMINER BELLMAN: That goes to the pleadings and all the proof up to this time, in that limited sense.

I take it that you are not requesting that either of the two witnesses be recalled in order to advance a line of questions to which objections were sustained without prejudice to your right to recall those witnesses? In other words, I want to know if you are resting your case or you are still reserving that point?

MR. ALTIERI: The first witness to whom questions of that character were addressed is not available this morning, and I can't recall him, and I therefore have no intention of recalling him.

The other witness is the charging party, and I have no
ention of recalling him, either.

Accordingly, I rest.

TRIAL EXAMINER BELLMAN: All right. The re-
ondent may proceed now, or you may request a recess, if
u wish.

MR. SYME: Mr. Examiner, I desire to address a motion
you now.

TRIAL EXAMINER BELLMAN: All right. 241

MR. SYME: The respondents, Local 501 and William
tterson, move to dismiss the complaint and these proceed-
gs upon the following grounds: First, that no question of
terstate commerce is here involved; second, that the Na-
nal Labor Relations only has jurisdiction where inter-
te commerce is involved; third, that the National Labor
lations Board has no jurisdiction in this matter; fourth,
at the National Labor Relations Board lacks jurisdiction
er the subject matter set forth in the complaint; fifth, that
e complaint does not state a charge against respondents
on which relief can be hereby granted; sixth, that because
the small gross annual business conducted by the com-
ainant, Samuel Langer, the National Labor Relations
oard should decline jurisdiction in this matter; seventh,
at the provisions of the Labor-Management Relations Act
hich the complaint seeks to enforce are in violation of the
ovisions of the Federal and State Constitutions and Bills
Rights, and that they tend to deprive the respondents of
e right of free speech.

TRIAL EXAMINER BELLMAN: Is this motion identi-
l or in substance the same motion that you made at the
ening of the hearing?

MR. SYME: The same motion.

TRIAL EXAMINER BELLMAN: And your reasons for the motion are those stated in Respondent's Exhibit No. 1 and the evidence up to the present time in the case?

MR SYME: Yes.

242 TRIAL EXAMINER BELLMAN: I am going to give you the same ruling that I gave when the motion was originally made. I will deny the motion to dismiss, without prejudice to its renewal.

MR. SYME: We respectfully except.

May I have the record show that the Trial Examiner who is presiding at this hearing is the same Trial Examiner who presided at the hearing in the case involving the action of Sperry vs. Denver Building Trades Council, reported at 77 Fed. Sup. 321.

TRIAL EXAMINER BELLMAN: I believe you are inaccurate, in fact, but not in intention. The case you
243 referred to is the case before the United States District Court of Colorado, and, of course, there was a Federal District Judge presiding there.

The Trial Examiner here presiding did hear the case before the Board when it came on for hearing later, and I can give the exact caption of that case. That is the case heard by the Trial Examiner here. The record may show that the present sitting Trial Examiner heard and issued an intermediate report in the matter of Denver Building and Construction Trades Council, et al, and Earl C. Gould and John C. Preisner, doing business as Gould and Preisner, case No. 30-CC-2.

MR. SYME: Of course, I will adopt the formal title. I was not aware of it.

TRIAL EXAMINER BELLMAN: You see, one was the

request for injunction, which carried the caption involving the Regional Director.

MR. SYME: Yes, sir.

Now, I understand that Mr. Altieri will concede that the paper I now hand him was released by the National Labor Relations Board.

MR. ALTIERI: Yes, sir.

MR. SYME: With that concession, I offer the paper in evidence.

MR. ALTIERI: Are we now on the respondent's case, sir?

MR. SYME: Certainly. 244

TRIAL EXAMINER BELLMAN: The respondent is proceeding.

MR. SYME: I might say for your Honor's information that this is the paper upon which Point 3 of our brief is based. This is the release by the National Labor Relations Board. It appears in Point 3 of our brief.

MR. ALTIERI: I object to the admission of the paper in evidence as incompetent, irrelevant and immaterial.

MR. SYME: It is a press release issued by the Board, and it is an admission against interest. It is in support of our Point 3 in our brief.

TRIAL EXAMINER BELLMAN: The document may be marked as Respondent's Exhibit No. 2. I am familiar with the original report of which this is a press release and, of course, will naturally be aware of that particular holding of one of my colleagues and my reasoning therein which will be of bearing will be considered, naturally, in my deter-

mination, in any determination which I may reach in this case.

I might say that this pertains to a Trial Examiner's intermediate report, and not to a Board action, as I understand it.

Is that your understanding of it?

MR. SYME: Yes, sir. In other words, one of your colleagues has ruled thus and so.

TRIAL EXAMINER BELLMAN: All right, the document is admitted in evidence as Respondent's Exhibit No. 2.

(Document referred to was received in evidence as Respondent's Exhibit 2.)

TRIAL EXAMINER BELLMAN: No duplicate of that need be furnished.

245 MR. SYME: Respondents rest.

We renew the motion to dismiss the proceedings upon all the grounds stated in the motion made at the close of the complainant's case.

TRIAL EXAMINER BELLMAN: I will give you an absolutely different ruling now, because this appears to be toward the end of the proceeding. However, I will reserve ruling on that motion in its various phases for the intermediate report.

MR. ALTIERI: May I, before you undertake to pass upon the motion, make a brief statement?

TRIAL EXAMINER BELLMAN: I am reserving ruling to my intermediate report.

MR. ALTIERI: Well, I would like to make a statement.

TRIAL EXAMINER BELLMAN: All right, go ahead.

MR. ALTIERI: Frankly, I am caught a little bit by surprise. I had anticipated that Mr. Patterson, one of the respondents in this case, might have seen fit to take the stand, but in view of the fact that he has not, I am going to ask the permission of the Trial Examiner to reopen the General Counsel's case for the very limited purpose of offering in evidence a copy of an affidavit submitted by Mr. Patterson, one of the respondents in this case, in the District Court proceedings.

Do you have any objection? 246

MR. SYME: Certainly we object. They have rested, and we made our motion, and the Trial Examiner ruled on the motion already.

MR. ALTIERI: I ask the Trial Examiner for permission to reopen our case.

TRIAL EXAMINER BELLMAN: Are you planning just to offer the affidavit?

MR. ALTIERI: Yes, sir.

TRIAL EXAMINER BELLMAN: What is the basis for the offer?

MR. ALTIERI: An admission against interest.

MR. SYME: They should have done that before they closed. The case is finished. They have rested and we have rested.

MR. ALTIERI: I understand that, but I think that it is permissible to reopen the case for the purposes of putting in all the evidence to be considered by the Board.

MR. SYME: Here is another situation where they take us by surprise. They took three days to put in their case, and they never saw fit to call Mr. Patterson, and they

didn't offer the affidavit, and not having called him and not having offered the affidavit, I didn't bring him here to court today.

I submit that when they have finally rested, they should not be allowed to reopen their case for something that they could have put in on Wednesday or Thursday, when Patterson was here.

247 TRIAL EXAMINER BELLMAN: Are you making any claim that there was an understanding between counsel that Patterson would take the stand?

MR. ALTIERI: No, not at all, sir.

However, it is only 12:15 now. If it is Mr. Patterson's presence that is the difficulty, I request that Mr. Patterson be produced.

MR. SYME: If they want him, they could have subpoenaed him. They never asked to have him produced until the entire case is over and all the motions have been made and ruled upon.

Having Patterson here wouldn't make a bit of difference. If he made an affidavit and it is signed and sworn to, they have had it in their custody ever since the Federal Court proceedings were instituted, and they never gave the slightest intimation that they were going to use it or that they were going to call Patterson.

TRIAL EXAMINER BELLMAN: You would have to make a showing that the matter has such materiality as to justify this unusual procedure, and I still would be reluctant to reopen the case. It seems to me that you should put your case in.—

MR. ALTIERI: All right, I will withdraw my motion to reopen the case, Mr. Examiner.

I am going to ask the opportunity—and I am going to ask Mr. Syme for his cooperation—to put on one witness in rebuttal.

TRIAL EXAMINER BELLMAN: You have a right to rebuttal, but you didn't ask for rebuttal.

MR. ALTIERI: Well, he went right into his motion.

All right, I will ask for rebuttal.

TRIAL EXAMINER BELLMAN: The respondent made a motion, which it had a right to make, at the conclusion of its case, and I am reserving ruling on that motion. 248

Now, are you interested in rebuttal? If so, I will hear rebuttal witnesses.

MR. ALTIERI: Of course, let me make this clear, Mr. Bellman; I used the term "rebuttal," but I don't think it is properly useable here, because they have not introduced any evidence of their own, except for one or two documents. So that what I mean is that normally I would have been permitted to introduce rebuttal at the conclusion of the respondents' case.

Now, apparently you see some difficulty, because I put it in the form of a request for reopening.

Frankly, I can't see any reason for the hesitation in permitting me to introduce in evidence a statement against interest made by one of the respondents in the case, whether by way of reopening or rebuttal, or whatever you want to call it.

MR. SYME: We renew our objections.

TRIAL EXAMINER BELLMAN: Will you indicate in what way you feel that this unusual procedure is justified in terms of the vital nature of the evidence? It is unusual

procedure to ask to reopen this case. You know that as well as I do.

MR. ALTIERI: I directed myself to the discretion of the Trial Examiner. I suggested that there is no possible
249 surprise as to the subject matter I seek to offer in evidence. It is the affidavit prepared by one of the respondents in this case, served upon me a long time ago, and the contents of which we both know about. I believe it will make the record more complete, I confess, my reason for not offering it earlier was the expectation of the respondent's being in court. I asked Judge Syme whether he would be here, and he said he thought he would be, that he had asked him to come.

Now, I respectfully submit that it is within the discretion of the Trial Examiner to rule on a motion to reopen the case and that the motion should be granted in favor of that application.

MR. SYME: I have nothing to say except that we renew our objection.

TRIAL EXAMINER BELLMAN: You concede that the affidavit was made and has been in your possession and that
250 you know the contents thereof?

MR. SYME: I will concede that this affidavit was presented to the District Court in the application for a temporary injunction.

MR. ALTIERI: That is, presented by the respondents in that case?

MR. SYME: Presented by the respondents. They have had it ever since.

TRIAL EXAMINER BELLMAN: And it was signed by Patterson?

MR. SYME: Yes. There is no question about that. We don't raise that question at all. We say they didn't offer it at the proper time, and that the case should not be reopened. The case is closed. Both sides have rested. They have both rested, and we put in our rebuttal, such as we saw fit to put in, and the motions were made and you reserved decision on the motions. We say, therefore, that it is too late.

TRIAL EXAMINER BELLMAN: Certainly it is within the discretion of the Trial Examiner to deny the motion to reopen. I am desirous, however, of having in the record any evidence which is material.

Now, I will permit counsel for the General Counsel to mark this document as General Counsel's Exhibit No. 4 and to make an offer, at which time I will then examine the document.

(Document referred to was marked General Counsel's Exhibit 4 for identification)

MR. SYME: It is marked for identification as General Counsel's Exhibit No. 4? 251

TRIAL EXAMINER BELLMAN: That's right. General Counsel's Exhibit No. 4 for identification now, and I will permit counsel for the General Counsel to make an offer of the document.

MR. ALTIERI: I offer in evidence General Counsel's Exhibit No. 4 for identification.

MR. SYME: We object to it being received upon all the grounds stated in the objections made to the reopening of the case by the General Counsel.

TRIAL EXAMINER BELLMAN: Off the record.

(Discussion off the record.)

TRIAL EXAMINER BELLMAN: On the record.

I have spent some time reading the document marked General Counsel's Exhibit 4 for identification. It covers quite a good deal of material, some of which has not been touched upon in this hearing. It refers to and discusses affidavits which are not a part of this record.

I would like to have counsel for the General Counsel point to specifically what in this affidavit he bases a request upon for the introduction of this sort of material.

252 MR. ALTIERI: There is a statement made in here by Mr. Patterson which bears immediately and directly on the question of the effect and the known effect of the picketing, which may be material in this case.

Now, it states in here: "That at no time were any of the journeymen employed on the job ever directly ordered off the work." And he underlines the word "directly."

TRIAL EXAMINER BELLMAN: Well, that was certainly shown by the evidence. You don't contend otherwise, do you?

MR. ALTIERI: I do suggest that the statement I have read, in conjunction with the evidence in the case, does tend to show, by reason of the emphasis he places on the word "directly," that an effect, indirect or otherwise, was to order these men off the job, and that that was the calculated effect of the picketing.

May I go off the record for a moment?

TRIAL EXAMINER BELLMAN: Off the record.

(Discussion off the record.)

TRIAL EXAMINER BELLMAN: On the record.

MR. ALTIERI: I was under the impression that the application would be granted readily, Mr. Bellman. I am apparently in error.

It is my understanding that before the matter can be finally determined—the question of whether or not this paper should be admitted—I may have to pose questions requiring the extension of this hearing and the going into of matters which, possibly in the opinion of the Trial Examiner and of counsel for the respondents, have not yet been covered by the evidence in the case; so that I will withdraw my offer of this paper, and I will withdraw my motion to reopen the case.

TRIAL EXAMINER BELLMAN: Well, I assure you that if the offer were pressed, it might require considerable further evidence to clear up certain matters in there. It may not, but, at any rate, as I stated to you in the off-the-record discussion, there are many things in that document that have not yet come into evidence. That is certainly true; isn't that correct? 253

MR. ALTIERI: It is my own personal opinion, Mr. Bellman, since you ask me, that there is nothing in the document that has not been touched upon.

Now, I had not seen any difficulty in having that admitted—since it constitutes the sworn affidavit of one of the respondents—but I can see very well how, in making the offer, the respondents might feel that they should have—and rightfully—the right to have that explained and developed, and in view of all these considerations, I will, as I said before, withdraw my motion.

TRIAL EXAMINER BELLMAN: Do you want to withdraw the document itself, or do you want it marked as a rejected exhibit?

254 MR. ALTIERI: Are you now ruling that you reject the exhibit?

TRIAL EXAMINER BELLMAN: No, I am just inquiring whether you are withdrawing it or—

MR. ALTIERI: Well, I am merely withdrawing the document.

TRIAL EXAMINER BELLMAN: You withdraw the document and the request to open and all? Very well.

MR. ALTIERI: Yes, sir.

TRIAL EXAMINER BELLMAN: I take it that every one has rested, and the question of oral argument is the next matter which should receive consideration.

I indicated in my opening statement that the parties are entitled to request oral argument and that oral argument would be on the record at the close of the hearing.

Do any of the parties desire to argue orally before the Trial Examiner?

MR. SYME: As far as the respondents are concerned, your Honor, I would prefer to submit my argument in writing by way of a brief. I will waive oral argument.

TRIAL EXAMINER BELLMAN: What about the General Counsel?

MR. ALTIERI: I think the legal questions here would be better treated in formal briefs, and I don't believe we should, unless the Trial Examiner wishes it, engage in oral argument this morning.

TRIAL EXAMINER BELLMAN: Well, I had noted a few questions which I thought I might ask.

I think I will ask two or three questions of each of the

parties, for my consideration of the matter, prior to the presentation of briefs.

Let me address a few questions to the counsel for the 255
General Counsel first, in lieu of oral argument.

If you will look at paragraph 16 of the complaint, you will notice that it refers to threats, and specifically it alleges that respondents have threatened and now threaten hereafter to induce and encourage employees of other employers to engage in certain activities.

Now, do you construe that the Act makes threats to strike violations?

MR. ALTIERI: Frankly, sir, I don't know the answer to that question.

The statute does not, in terms, make clear whether a threat to engage in a strike in order to force or require an employer to cease doing business with some other person or to cease handling the other person's goods, constitutes a violation of Section 8(b)(4)(A) or not.

It is not, in answer to your question, a part of the Gen- 256
eral Counsel's theory of this case that the mere threat to an employer to engage in a strike in order to induce or force or require the employer to cease doing business with some other person is the violation with which the respondents are charged here.

I simply don't know at this point—and I have no theory, I might say, of my own as to what the correct answer is—as to whether or not a threat under those circumstances does violate the statute or not.

TRIAL EXAMINER BELLMAN: I might say this, as applying to my questions, that some of these may come as something of a surprise, but I am not expecting you to be

bound by your answers now, if, after further consideration, you want to indicate in your brief that you are of the opinion that such additional considerations should apply.

Then, do you contend that the respondents themselves have engaged in a strike? Paragraph 17 has it in the alternative wording of the Act, namely, that respondents have engaged in and have induced and encouraged the employees of Deltorto to engage in a strike or concerted refusal.

Is it your contention that the evidence itself shows that the respondents themselves engaged in a strike, or are you resting your case on the alternative, or the other basis, shall we say, that they induced or encouraged the employees of Deltorto to engage in a strike?

MR. ALTIERI: I won't express any theory, for the reason that you said a moment ago that you won't bind us by what we say here.

257 However, it appears to me that some merit attaches to the argument, and I would like to treat on that in the brief, that engaging in a strike may very properly be extended in the sense of precipitating a strike which is called for one purpose or another, and to the extent that the respondent here precipitated a strike by the employees of the carpenter contractor, to that extent have they engaged in a strike.

I do think, of course, that the alternative theory is much clearer and much more direct, that they have induced or encouraged the employees of Nicholas Deltorto to engage in a strike.

TRIAL EXAMINER BELLMAN: What about 8(c)? What inducing is there beyond Section 8(c), or do you think Section 8(c) applies to Section 8(b)(4)(A)?

MR. ALTIERI: In answer to your question, sir, I would state that I am not entirely certain that Section 8(c) was intended to or does, in fact, apply to or qualify Section 8(b)(4)(A). But assuming that it does—and I say that because I am aware of the fact that there is a good deal of opinion that is held by persons who have had close contact with this statute that Section 8(c) must be considered as limiting and qualifying Section 8(b)(4)(A)—I say assuming that it does, I don't believe that any form of picketing—and particularly picketing when it occurs under the circumstances that have been developed at this trial, where a local of a Building Trades Council, closely affiliated as it is with other locals in the construction industry in the same Council, extending and receiving reciprocal benefits—which, by the way, stands admitted on the state of this record—and containing within itself, per se, a necessarily coercive element, which was clearly established by the testimony, and the demeanor of the full effect that led the parties to walk off the job—that there is a coercive element, per se, of picketing under the circumstances, and a promise of benefit, which I say necessarily arises out of the mutual assistance, the relationship between these unions within the Trades Council, which satisfies the requirements of Section 8(c), if 8(c) must be applied to and limit Section 8(b)(4)(A). 258

I might point out also, Mr. Bellman, that in my opinion, picketing under these circumstances, projected as it is against a background of widespread knowledge that people working on the job are bound to have a reaction of fear, cannot be held to come within the scope of a section like 8(c), which, on its face, presupposes a cold appeal to reason, the expression of views, arguments, or opinion.

TRIAL EXAMINER BELLMAN: Well, what would you

say relative to this situation and the constitutional protection of free speech?

259 MR. ALTIERI: Of course, if there is any merit in the previous argument that I have attempted with respect to the proper interpretation of Section 8(c), I think, a fortiori, any constitutional questions of free speech could be met more easily. I think that there is nothing in the decisions of the Supreme Court which have associated picketing with the concept of free speech and which have, under certain circumstances, extended to picketing the protection of the guarantee of free speech which is contained in the Constitution. I think that where picketing, or even speech, if it were proper to consider picketing as pure free speech —which I don't concede and which I think the cases do not require us to hold—I don't think there is anything in the Constitution that prohibits the Congress from saying that it shall be unlawful to engage in certain types of speech for the purpose of securing an unlawful objective, an objective which we here and now make unlawful by the statute.

So that here, if the secondary boycott is a proper subject of regulation by Congress at all, and if, apart from questions of free speech, it is proper for Congress to say that it shall be unlawful to engage in a secondary boycott, then I say there is no constitutional infirmity in Congress's saying, "You can't accomplish that secondary boycott by measures which partake of the nature of speech." In other words, you can't secure, in my opinion, an unlawful end by means that would normally be lawful.

TRIAL EXAMINER BELLMAN: Will you elaborate in your brief upon the basis for the contention that the activities presented here violated Section 8(b)(1)(A)?

MR. ALTIERI: Would you like me to comment on that now? Is that your request?

TRIAL EXAMINER BELLMAN: Well, if you wish. I would like to have the matter presented either now or in your brief.

MR. ALTIERI: I would like to develop that in my brief, 260
unless you want me to comment on it now.

MR. BELLMAN: Well, if you can comment briefly on it?

MR. ALTIERI: Well, Section 8(b)(1)(A) makes it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in Section 7, and Section 7 itself, as it is now framed, gives to employees the right to refrain from any or all collective activities, as they see fit. To the extent that the activities of the respondents here induced and encouraged the employees of Nicholas Deltorto, by coercive actions—assuming the circumstances under which they have been induced and encouraged contained—as we do—elements of reprisal or promises of benefits, then we think that that infringes on their right to refrain from walking off the job, under those circumstances.

TRIAL EXAMINER BELLMAN: Does the respondent now wish to comment on any of the questions I have raised to counsel for the General Counsel?

MR. SYME: No, sir. I will refrain, your Honor, from oral argument, and say everything I have to say in my brief.

TRIAL EXAMINER BELLMAN: I would like to have a statement on the record by either of the parties as to the present status of the temporary restraining order signed on June 29, 1948, by United States District Judge Clancy.

261 MR. SYME: Well, the situation is this: they made the usual motion for an injunction, and we went down and asked for an adjournment, which was opposed, and Judge Clancy refused to grant the adjournment; whereupon I agreed that the temporary injunction order which Judge Clancy finally signed be entered.

MR. ALTIERI: That wasn't quite the way it was, I believe. It was originally on your consent that Judge Clancy signed the restraining order.

MR. SYME: I had to consent to it, because he said that he would not give me the adjournment.

TRIAL EXAMINER BELLMAN: I simply want to know whether anything has happened since it was signed.

MR. SYME: The application has been held in abeyance until the hearing held before you.

MR. ALTIERI: The temporary restraining order was
262 signed by Judge Clancy, and then the respondents were given time within which to adjourn the matter. On the adjourned day, Mr. Syme again, on behalf of his clients, consented to the entry of the preliminary injunction which, unlike the temporary restraining order—which was to last only until such time as the District Court heard and determined the application for a preliminary injunction—was now to run until such time as the Board heard and determined the case on the merits.

So that there is now in existence a preliminary injunction signed on consent of the respondents—and I may add without any hearing on the merits before the Court—by Judge William Bondy, entered on the 14th day of July, 1948, which is to run until such time as the Board renders its final decision.

TRIAL EXAMINER BELLMAN: Is that correct now?

MR. SYME: That is substantially correct.

TRIAL EXAMINER BELLMAN: The reason I wanted to know the fact is that I am now confronted with the question of time for submission of briefs.

I understand that both the respondents and General Counsel desire to submit briefs.

On July 14, 1948, then, the preliminary restraining order was issued, to run until such time as the Board decided the case; is that right?

MR. SYME: Yes, sir.

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TRIAL EXAMINER BELLMAN: All right, that is the present status of the matter.

Now, I would like to have it clear on the record as to how much time the parties desire to file briefs, because it is apparent that the preliminary restraining order will stay in effect until the matter is disposed of by the Board, and, of course, the preliminary stage is the disposal of the matter by the Trial Examiner.

I can give you, as I indicated in our informal discussion, as much as fifteen days. That is the maximum which the rules and regulations permit the Trial Examiner to give.

However, application can be made, as I pointed out to you, for permission to have further time, by application to the Chief Trial Examiner, in Washington. That request for further extension past such time as the Trial Examiner grants has to be referred to the Trial Examiner, in Washington, and I refer you to Section 203.42 of the Board's Rules and Regulations on that matter.

Will the respondent indicate its desire?

MR. SYME: It is going to take me at least two weeks after I get the minutes. We have ordered the minutes, and

I understand from the Court Stenographer that it will be the end of next week before we get the minutes from him.

264 I will ask for fifteen days from the time the minutes are delivered.

TRIAL EXAMINER BELLMAN: I have indicated that I will not be able to give more than fifteen days. I have also indicated that I would construe that as fifteen working days, if the parties so desired and requested. That would carry the date to August 30th, which would be a Monday. In other words, that would give you a substantial amount of time, you see. If the briefs were on my desk in Washington on August 30th, that would give you fifteen working days.

MR. SYME: I can't go to work until the stenographer gives me the tools.

TRIAL EXAMINER BELLMAN: Well, do you want that much time?

MR. SYME: Yes, sir, I do.

TRIAL EXAMINER BELLMAN: What is the position of the General Counsel?

MR. ALTIERI: We would like at least that much time, sir.

TRIAL EXAMINER BELLMAN: The reason I am particularly interested in having this clear is that this restraining order which is pending will be in effect pending the Board's decision, and I don't want to do anything to delay that decision.

As I have indicated, I would like to have the briefs
265 earlier, if you can get them to me. I would appreciate it if you would get them to me as early as you can. But I will, in view of the positions of the parties, grant you the

full time that I am able to grant under the Board's rules and regulations, and I will give you until August 30th to have your briefs with me, in care of the Chief Trial Examiner, in Washington, D. C.

With respect to the intermediate report, when issued, you will find that covered by the Board's Rules and Regulations, Section 203.45 and 203.46. Those are concerned with matters after the issuance of the intermediate report.

Is there anything further to come before the Trial Examiner?

MR. SYME: Not that I know of.

TRIAL EXAMINER BELLMAN: Does the General Counsel have anything further?

MR. ALTIERI: No, sir.

TRIAL EXAMINER BELLMAN: All right, sir.

MR. SYME: I have one brief matter. I would like to express my appreciation of your courtesy in conducting this hearing.

TRIAL EXAMINER BELLMAN: Well, that is my function, I will always, of course, try to cooperate with the parties.

MR. SYME: It has been a pleasure to work with you.

TRIAL EXAMINER BELLMAN: It is rather unusual 266
to have such a remark made on the record.

Thank you, sir.

Now, if you will get those briefs to me as soon as possible, I would appreciate it.

If there is nothing further, the hearing is closed.

(Whereupon, at one o'clock p.m., hearing in the above-entitled matter was closed.)

City of Washington
267 District of Columbia }

I, Norman P. Mathias, depose and state as follows:

1. I am an Industrial Analyst employed by the National Labor Relations Board, 815 Connecticut Avenue, Washington 25, D. C.

2. The attached exhibits, numbered 1 through 12, were prepared in the Industrial Analysis Branch of the National Labor Relations Board under my supervision and I certify that they are true and correct compilations of the information therein contained from the official sources listed therein.

NORMAN P. MATHIAS

Subscribed and sworn to before me this 23rd day of June, 1948.

ROSE MARY FILIPOWICZ
Notary Public

My Commission expires March 15, 1953.

National Labor Relations Board
Industrial Analysis Branch
Washington 25, D. C.
June 1948

npm

Re: Samuel Langer
Case No. 2-CC-40.

Ex. 1. Value of Construction Activity in the United States, 1946.[1]

Kind of Construction	*Value*
All construction	$15,667,000,000
New construction	10,007,000,000
Private residential, new	3,300,000,000
Public utility, new	856,000,000
Industrial, new	1,689,000,000
Public, new	2,151,000,000
Maintenance and repair	5,660,000,000

[1] Title not in original; supplied for identification only.

Source:
United States Department of Commerce, Bureau of Foreign and Domestic Construction Division, *Dollar Construction Estimates, 1915-1946*, May 1947, pp. 3, 4, 6, and 8.

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Industrial Analysis Branch
Washington 25, D. C.
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Re: Samuel Langer
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Ex. 2. Dependence of Manufacturing and Lumbering on The Construction Industry.[1]

" . . . Moreover, the (construction) industry provides a market for a preponderant percentage of such products as steel, lumber, stone, brick, paper, paint and glass. It (the construction industry) is, for example, the second largest customer of the steel industry, consuming about 14.9 percent of the total steel output in 1927 as compared with 13.3 percent taken by automobile manufacturers and 20.4 percent by the railroads. Probably more than 60 percent of all the lumber cut in the country is used for building construction purposes. In addition, building creates an almost immediate market for furniture, carpets, furnaces, and household goods . . ."

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[1] Title not in original; supplied for identification only.

Source:
Encyclopedia of the Social Sciences, Seligman and Johnson, Editors, Vol. IV, 1931, p. 266.

National Labor Relations Board
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Washington 25, D. C.
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Re: Samuel Langer
Case No. 2-CC-40

Ex. 3. Copper Production and Construction Activity in Specified States and the United States, 1945.[1]

State	*Copper Production* (tons)	*Construction Activity*
Arizona	287,203	$ 25,000,000
Utah	226,376	24,300,000
Total, 2 states	513,579	$ 49,300,000
Total, United States	772,894	$4,595,000,000
Percent, above 2 states of U. S. total	66	1
California	6,473	$ 686,700,000
Texas	55	337,000,000
Illinois	0	237,100,000
New York	0	226,000,000
Total, 4 states	6,528	$1,486,800,000
Percent, above 4 states of U. S. total	1	32

[1] Title not in original; supplied for identification only.

Compiled and computed from:

U. S. Department of Interior, Bureau of Mines, *Minerals Yearbook, 1945, 1947*, p. 128 (copper production).

U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, Construction Division, *Dollar Construction Estimates, 1915-1946*, May 1947, p. 36 (construction activity).

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Industrial Analysis Branch
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Re: Samuel Langer
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Ex. 4. Lead Production and Construction Activity in Specified States and the United States, 1945.[1]

State	*Lead Production* (sucl)	*Construction Activity*
Missouri	176,575	$ 83,200,000
Idaho	68,447	26,900,000
Total, 2 states	245,022	110,100,000
Total United States	390,831	$4,595,000,000
Percent, above 2 states of U. S. total	63	2
California	7,224	$ 686,700,000
Texas	0	337,000,000
Illinois	3,005	237,100,000
New York	862	226,000,000
Total, 4 states	11,091	$1,486,800,000
Percent, above states of U. S. total	3	32

[1] Title not in original; supplied for identification only.

Compiled and computed from:

U. S. Department of Interior, Bureau of Mines, *Minerals Yearbook, 19[illegible] 1947*, p. 158 (lead production).

U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, Construction Division, *Dollar Construction Estimates, 1915-19[illegible]* May 1947, p. 36 (construction activity).

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Re: Samuel Langer
Case No. 2-CC-40

Ex. 5. Iron Ore Production and Construction Activity in Specified States and the United States, 1945.[1]

State	*Iron Ore Production* (tons)	*Construction Activity*
Minnesota	61,620,337	$ 78,800,000
Total, United States	87,858,953	$4,595,000,000
Percent, Minnesota of U. S. total	70	2
California	208,609	$ 686,700,000
Texas	217,237	337,000,000
Illinois	0	237,100,000
Total, 3 states	425,846	$1,260,800,000
Percent, above states of U. S. total	[2]	27

[1] Title not in original; supplied for identification only.
[2] Less than 0.5 percent.

Compiled and computed from:

U. S. Department of Interior, Bureau of Mines, *Minerals Yearbook, 1945, 1947*, p. 550 (iron ore production).

U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, Construction Division, *Dollar Construction Estimates, 1915-1946*, May 1947, p. 36 (construction activity).

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Re: Samuel Langer
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Ex. 6. Prevalence of Relatively Small Establishments in the Construction Industry.[1]

Total number of establishments in the construction industry in 1939: 215,050.

Total number of employees in the construction industry in 1939: 1,073,655.

Total value of work performed in the construction industry in 1939: $4,519,794,000.

Total number of establishments which did less than $25,000 worth of business in 1939: 187,524.

Percent of total number of establishments which did less than $25,000 worth of work in 1939: 87.2.

Total number of *special trade contractors*[2] in the construction industry in 1939: 176,187.

Number of special trade contractors which did less than $25,000 worth of business in 1939: 162,067.

Percent that special trade contractors doing less than $25,000 worth of business were of total number of establishments in 1939: 75.4.

Total value of construction work performed by special trade contractors who did less than $25,000 worth of business in 1939: $829,680,000.

Percent of total construction work performed by special trade contractors: 18.4.

[1] Title not in original; supplied for identification only.

[2] The Bureau of the Census defines this term as follows:

"A special trade contractor is one who contracts for and is primarily engaged in a specialized trade such as plumbing, painting, concreting, steel erection, carpentering, etc."

Compiled and computed from:

U. S. Department of Commerce, Bureau of the Census, *Census of Business, 1939, Volume IV, Construction, 1939, 1943*, pp. 6, 12, and 17.

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Re: Samuel Langer
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Ex. 7. Interstate Construction Activity in 1939.[1]

Total value of work performed in the construction industry in 1939: $4,519,794,000.

Value of construction work performed by contractors outside their home states in 1939: $688,659,000.

Percent of total construction work performed by contractors outside their home states in 1939: 15.2.

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[1] Title not in original; supplied for identification only.

Source:

U. S. Department of Commerce, Bureau of the Census, *Census of Business, 1939, Volume IV, Construction, 1939, 1943*, pp. 12 and 13.

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Ex. 8. Number of Establishments, Number of Employees, and Value of Work Performed in the Construction Industry in 13 Large Cities Situated on State Lines, 1939.[1]

City	*Value of Work Performed*	*Number of Employees*	*Number of Establishments*
Chicago	$ 210,371,000	43,996	4,629
Cincinnati	25,969,000	5,486	1,074
Kan. City, Mo.	36,312,000	9,383	913
Memphis	14,292,000	4,235	513
Newark	19,342,000	4,240	651
New York	454,793,000	90,732	11,412
Omaha	16,201,000	3,649	435
Portland, Ore.	23,081,000	5,716	826
Providence	13,633,000	3,234	512
St. Louis	49,794,000	11,385	2,456
Philadelphia	112,884,000	24,004	4,938
Washington	54,929,000	13,933	1,147
Louisville	21,650,000	5,461	964
TOTAL	$1,053,251,000	225,454	30,470

[1] Title not in original; supplied for identification only.

Compiled and computed from:

U. S. Department of Commerce, Bureau of the Census, *Census of Business, 1939, Volume IV, Construction, 1939, 1943,* pp. 258-308.

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N. M.

Re: Samuel Langer
Case No. 2-CC-40

Ex. 9. Lumber Production and Value of Construction in Specified States and the United States, 1946.[1]

States	*Lumber Production (million board ft.)*	*Value of Construction*
Lower Mississippi and East Gulf States[2]	9,308,701	$ 1,702,300,000
North Pacific States[3]	8,671,767	372,600,000
South Atlantic States[4]	4,583,344	486,300,000
Total, above states	22,563,812	$ 2,561,200,000
Total, United States	35,061,504	10,007,000,000
Percent, above states of U. S. total	64.4	25.6
Total, United States minus above states (balance)	12,497,692	$ 7,445,800,000
Percent, balance is of U. S. total	35.6	74.4

[1] Title not in original; supplied for identification only.

[2] Alabama, Florida, Georgia, Arkansas, Louisiana, Mississippi, Oklahoma and Texas.

[3] Oregon and Washington.

[4] North Carolina, South Carolina, and Virginia.

Compiled and computed from:

U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, Construction Division, *Construction Materials, 1915-1946*, 1947, p. 37; *Dollar Construction Estimates, 1915-1946*, May 1947, p. 36.

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National Labor Relations Board
Industrial Analysis Branch
Washington, D.C.
June 1948

N. M.

Re: Samuel Langer
Case No. 2-CC-40

Ex. 10. More Workers Employed in The Construction Industry Than in Mining, Railroad Transportation, or Iron and Steel Manufacturing in 1946.[1]

Industry	*Number of Employed Workers*
Construction	1,493,000
All mining	836,000
Railroad transportation	1,359,000
Iron and steel[2]	1,394,000

[1] Title not in original; supplied for identification only.

[2] Largest single manufacturing industry in terms of employed workers.

Source:

U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, May 1947, pp. 917-925.

National Labor Relations Board
Industrial Analysis Branch 278
Washington, D.C.
June 1948

N. M.

Re: Samuel Langer
Case No. 2-CC-40

Ex. 11. Large Size of the Construction Industry and Dependence of Manufacturing Upon That Industry.[1]

"The construction industry itself shows a volume of activity ranging from nearly $12,000,000,000 a year during the peak of the last cycle to about $3,000,000,000 at the low point of the depression, as shown by chart I.[2] At the peak of employment, in the month of August 1928, approximately 2,400,000 workers were employed, while in the peak month (seasonally) of 1933, only 1,000,000 were employed —a drop of 58 percent.[4]

"In 1929 the industry accounted for approximately 5½ percent of the total nonagricultural labor forces of the United States.[3] This figure does not include the large number of workers in industries supplying products to the construction industry. The latter has been variously estimated from a number equal to 1½ times those directly employed in construction to a much larger figure. We may safely say that construction activity at its peak of the last cycle was responsible for the employment of between 4 and 5 million nonagricultural workers.

• • • •

"It is not only the direct expenditures and employment of the construction industry that have fluctuated so violently, but a large part of the manufacturing industry is also involved in the volume of construction activity.....

.....

[1] Title not in original; supplied for identification only.

Source:

76th Congress, 3d Session, Temporary National Economic Committee, *Monograph No. 8, Toward More Housing*, 1941, pp. 2, 3, and 8.

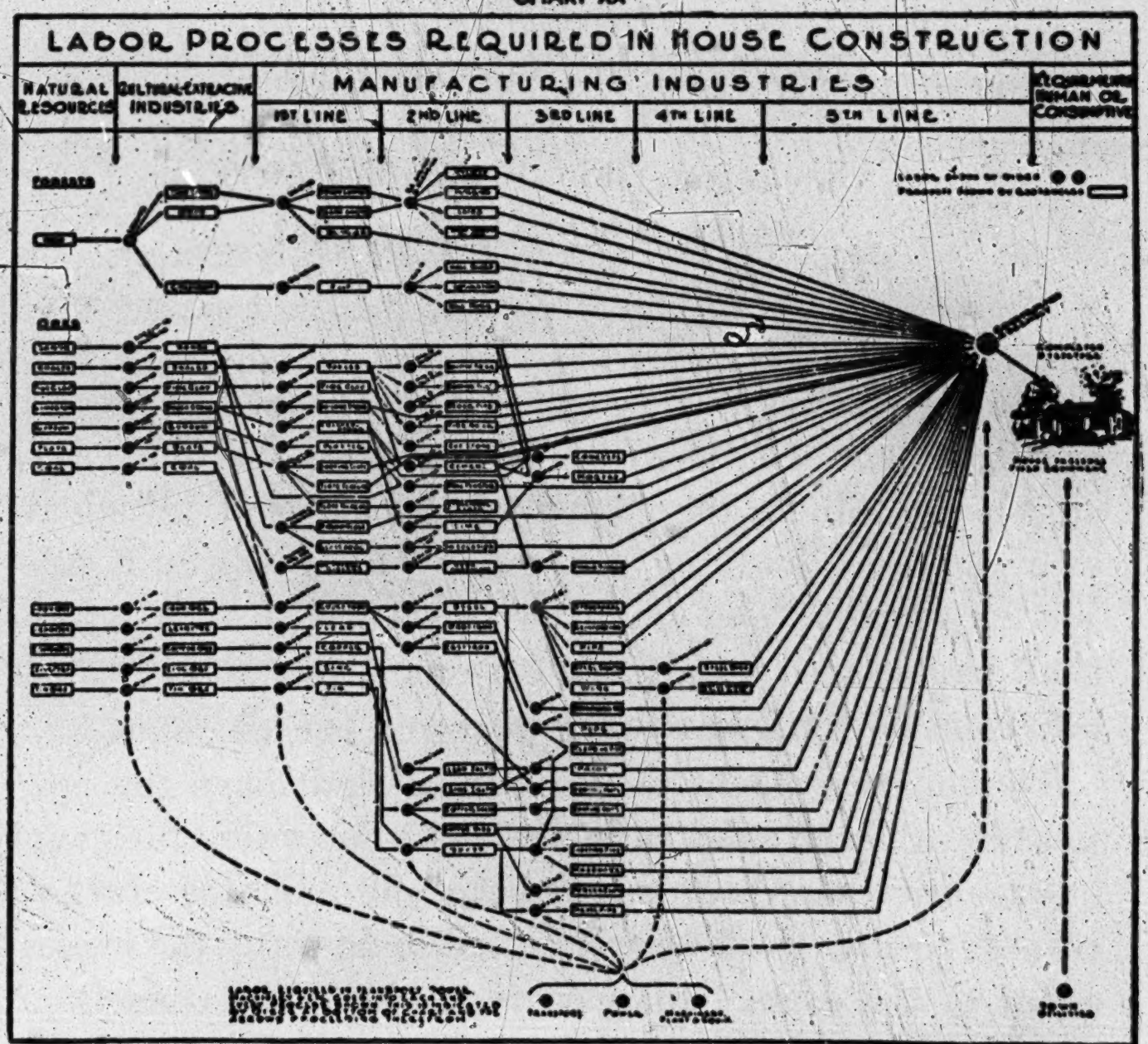
"The principal industries affected are lumber, brick and clay products, cement, structural and ornamental metal, heating apparatus, and plumbers' supplies. Pay rolls of practically all of these dropped from an index of approximately 110 (1923-25 average equals 100) during the height of activity in the last cycle to a low point of around 20 or less during 1933, as shown by charts II to IX.[8] In terms of employment, the drop was from about the same peak to around 30 to 40. The effect on all durable-goods manufacture is also shown in chart II. The index of employment for durable goods dropped from 110 in 1929 (1923-25 equals 100) to 50 in 1932, while the index of nondurable goods dropped from 110 to about 75 during the same period.

"The above shows only the effect on manufacturing. Transportation is likewise affected. It has been estimated that 19.5 percent of all revenue freight originating in 1929 was classified as construction materials; approximately one out of every five cars carried raw or finished construction materials. Approximately 11 percent of railroad employment and 12 percent of pay rolls could be attributed to construction in 1929.[9]

279 "In addition to the industry itself and that part of manufacturing and transportation concerned with construction materials, there is the effect upon the production of consumer goods and services. While there have been some attempts to measure the indirect effects of construction activity, such attempts have been too limited to warrant a conclusion capable of expression in terms of statistical measurement. Nevertheless, it is obvious that the differences between 1½ million[10] and 4 million persons engaged in a given activity must have serious repercussions on the whole economic scene."

EXHIBIT 12

CHART XX



Ex. 12. Source: 76th Congress, 3rd Session, Temporary National Economic Committee, Monograph Number 8, Toward More Housing, 1941, p. 182.

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CONSTITUTION AND BY-LAWS

OF THE

BUILDING AND CONSTRUCTION TRADES DEPARTMENT

American Federation of Labor

Amended at

Denver, Colo., September, 1937
Houston, Tex., September, 1938
Cincinnati, Ohio, September, 1939
Seattle, Wash., October, 1941
Chicago, Ill., October, 1946

• • • •

Sec. 36. Strikes must be called by the council or executive board in conformity with the foregoing section. When strikes are called, the council shall have full jurisdiction over the same, and any contractor who works on a struck job, or employs non-union men to work on a struck job, shall be declared unfair and all union men shall be called off from his work or shop.

The business agent of the council shall have the power to order all strikes when instructed to do so by the council or executive board. Any member of an affiliated craft who refuses to stop work when ordered to do so by the business agent of the council shall be reported to the council. All employees on a struck job shall leave the same when ordered to do so by the business agent, and remain away from the same until such time as a settlement is made or otherwise ordered by an official act of the local council, and if any international officer of an affiliated organization issues any adverse or nullifying order thereto, he shall also jointly serve the local Building and Construction Trades Council with a duplicate copy thereof.

• • • •

NATIONAL LABOR RELATIONS BOARD
Washington, D. C.

300

JUN 9, 1948

RELEASE FOR MORNING PAPERS, (R-90)
WEDNESDAY, JUNE 9, 1948

N.L.R.B. EXAMINER FINDS SMALL BUILDING TRADES CONTRACTOR NOT COVERED BY L.M.R.A.

A Trial Examiner for the National Labor Relations Board, Horace A. Ruckel, today stated that the Board should refuse jurisdiction over a building trades contractor whose gross annual business amounted to only $33,000.

The statement appeared in the Trial Examiner's report in which he recommended dismissal of an unfair labor practice case because there was insufficient evidence to show that the contractor's business either was in or affected interstate commerce.

Examiner Ruckel observed that "the effect of this business upon commerce is, at the best, remote and slight." He added that if the operations of the small contractor involved affect interstate commerce within the meaning of the law "then so do those of nearly every corner grocery and neighborhood bakery in the country."

It is the first time that an N.L.R.B. Examiner has declared that the Board should decline jurisdiction of a case under the Labor Management Relations Act.

Mr. Ruckel recommended dismissal of complaints against Walter J. Mentzer, Pittsburgh, Pa., plastering contractor, and Local 31 of the Operative Plasterers' and Cement Finishers International Association of the U. S. and Canada (A.F.L.). They were charged jointly with having effected

the discharge of George E. Wochley, also of Pittsburgh, under an illegal closed shop contract.

The Examiner's recommendation takes effect as an order of the Board unless contested by one of the parties within 20 days.

As to the impact of Mr. Mentzer's business upon interstate commerce, the Examiner declared that "his outflow of commerce is nil, and none of his plastering materials come to him directly across State lines." According to testimony at the hearing, he purchased all of his materials
301 from McCrady-Rogers Company, Pittsburgh building supply firm.

The Examiner declared further:

"The undersigned (Examiner Ruckel) does not believe that it was the intent of Congress because of its concern over jurisdictional disputes in the building trades, that jurisdiction should be asserted by the Board in each and every case which involves one of those trades even where, as here, there is no jurisdictional dispute. Moreover, there is a difference between asserting jurisdiction over an industry in general, and asserting it as to each and every employer in the industry regardless of his size and without respect to place and time, or the relation of his operations to those of other employers in the industry in a particular situation.

"Respondent Mentzer's business is much smaller than that of any employer as to whom the Board has asserted jurisidction, either under the Wagner Act or the Taft-Hartley Act, so far as diligent search by the undersigned has revealed. The effect of his business upon commerce is, at the best, remote and slight.

"The General Counsel made no attempt to show how, or to what extent, the commerce of McCrady-Rogers Company would be affected by a labor dispute among respondent Mentzer's employees. It is a reasonable inference that the two or three whom he regularly employed could go on

strike without the business of McCrady-Rogers Company being affected in the slightest degree."

Mr. Mentzer, himself a member of the Plasterers' Union, set up as a plastering contractor in 1946. He conducts his business from his home with his wife acting as bookkeeper. In 1947, the Examiner found, he showed a net profit of $3,300 on a $33,000 gross business.

The discharge of Mr. Wochley was alleged to have occurred while Mr. Mentzer was doing the plaster work on a Pittsburgh apartment house. He normally has two or three employees and works on the jobs himself, but for this job he had expanded his force to six, the Examiner reported.

Hearings were held by the Examiner at Pittsburgh May 13 through 15.

Explaining the division of authority under the law, the Examiner pointed out that the General Counsel, rather than the five-man Board itself, makes the first assertion of jurisdiction. He said:

"Under the Wagner Act, the Board, by authorizing and issuing a complaint, administratively asserted jurisdiction. Under the Taft-Hartley Act the General Counsel is the one who administratively asserts jurisdiction, and it is not until after a hearing is held and an Intermediate Report issued (by a Trial Examiner) that the Board is in a position to assert or decline jurisdiction judicially. Under these circumstances, it would seem to devolve upon the Trial Examiner to make recommendations concerning the assertion of jurisdiction when the matter is at issue, as here."

PROPOSED FINDINGS AND CONCLUSIONS OF PETITIONER BEFORE THE NATIONAL LABOR RELATIONS BOARD

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In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON and SAMUEL LANGER	Case No. 2-CC-40

You will please take notice that the following are findings and conclusions proposed in behalf of the Respondents, Local 501, and Patterson, and that the same will be presented for settlement to Examiner, Earl S. Bellman, Esq., at the office of the National Labor Relations Board, in the City of Washington, District of Columbia, on the 30th day of August, 1948.

Yours etc.,
SYDNEY A. SYME,
Attorney for Relators
201 Main Street
White Plains, N. Y.

To:
CHARLES T. DOUDS, ESQ.
Regional Director
National Labor Relations Board
2 Park Avenue
New York 16, N. Y.

FINDINGS OF FACT

1. That Respondent, International Brotherhood of Electrical Workers, Local 501, A. F. L., hereinafter called Local 501, and one of the Respondents herein, is a labor organization within the meaning of the Labor-Management Relations Act of 1947, having its principal office and place of business in the City of Mount Vernon, State of New York, where it is engaged, and has been engaged in promoting and protecting the interests of its members. (Complaint Paragraph 8).

2. That Respondent, William Patterson, hereinafter called Patterson, and one of the respondents herein, is and has been an agent for and business representative of Local 501, engaged in promoting and protecting the interests of the members of Local 501. (Complaint Paragraph 9).

3. That Samuel Langer is an electrical contractor having an office and place of business in the City of Port Chester, State of New York, where he is engaged in the business of contracting for and carrying out work in connection with the installation of wiring and electrical equipment on construction projects and other premises. (Complaint Paragraph 1). 303

4. During the year between July 1st, 1947 to July 1st, 1948, Langers total dollar volume of business was $24,443.96. (S.M.P. 49).

5. Langer's average number of employees on his electrical contracting work, was two employees, three at the most. (S.M.P. 94).

6. Except for a few short intervals, all the employees hired by Langer were non-union labor. (S.M.P. 67-68).

7. That in some of the electrical contract work performed

by Langer, he personally performed some of the manual labor, ordinarily performed by journeymen.

8. While Langer was performing such manual labor on some of his electrical contracts, he was not a member of any labor-union.

9. Whenever Langer applied to Local 501, for electrical workers, the Local would send him the number of men requested, except on occasions when all of the members of Local 501, were otherwise employed. (S.M.P. 91-92).

10. Upon such occasions, Local 501 would allow Langer to employ non-union labor to work on a "permit" until such time as Local 501 was able to furnish union men. (S.M.P. 92).

11. About March 16th, 1948, Langer entered into an agreement with the Georgi Construction Company for the electrical work on a private house being erected at Ridge Street at Douglas Drive in the Town of Greenwich, in the State of Connecticut. (S.M.P. 74-75).

12. The total amount of said electrical contract was $325. (S.M.P. 75).

13. Langer proceeded to perform such contract with two non-union employees named Carlucci and Vitti. (S.M.P. 75).

14. About April 16th, 1948, Patterson visited the Green-
304 wich job and discovered that Langer was performing the electrical contract with non-union labor.

15. Thereupon, Patterson talked to Nicholas Deltoro, the carpenter sub-contractor, and told him that the electrical work was being done by a non-union electrician; that is all that Patterson said at that time. (S.M.P. 183).

16. A day or two later Patterson again came to the job, and talked to Deltoro, and said that the electrical work was

being done by a non-union organization. "He did say he was sorry, but he didn't say—I don't remember him saying that he would have to do anything about it." (S.M.P. 184-185).

17. Then Patterson walked towards his car, and about four or five minutes later Patterson was seen wearing a placard that read, "This job is unfair to organized labor." (S.M.P. 185).

18. At that time Deltoro's two carpenters Ralph Ciancia and Angelo Bova were working on the scaffold; they came down off of the scaffold, one of them said "Let's go" (S.M.P. 185), "It's too warm. We ought to go home," or something like that (S.M.P. 188), and got in their car and went off (S.M.P. 185). Nothing was said by the men as to why they were getting off of the scaffold (S.M.P. 185).

19. At that time Patterson asked the two carpenters if they knew the job was non-union; he did not say anything else. (S.M.P. 205).

20. Ciancia explained his reason for leaving the job as follows: "I always look for the least excuse, anyway, to get off the job, because I have plenty of work of my own to do at home." (S.M.P. 209). "I walked off the job at any time of the day anyway. I have a lot of work to do myself." (S.M.P. 209).

21. Bova explained his reason for leaving the job, as follows: "Well, we took it upon ourselves, I believe, to just walk off. That's the way it really turned out. I helped Ralph (Ciancia) out on his house, you see, and I do a lot of work for Ex-G.I.'s, and I thought it was as good a time as any to take off." (S.M.P. 213).

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22. Patterson didn't say anything to Ciancia or Bova about quitting the job. No one told them anything about

quitting the job. They just took it upon themselves. (S.M.P. 216).

23. Nobody made any threats to them; none at all. They were not told that they had to leave the job. (S.M.P. 216-217).

24. The only employees which the Labor Board claims were caused to go on strike as a result of any acts on the part of respondents, are the two carpenters Ciancia and Bova.

25. At no time was any objection made by the Respondents to the material used by Langer in his construction work. (S.M.P. 97).

26. No attempt was made by Respondents to stop the use of material brought into the States of New York or Connecticut by Langer for use on his jobs, or in any other way. (S.M.P. 97).

27. At no time was any force or violence used in connection with the alleged picketing.

28. The alleged picketing, if any, had what may be described, at most, as indirect effect on Interstate Commerce.

29. The complaint served herein relates exclusively to the activities of Respondents in connection with the erection of a single residential building on Ridge Street in the Town of Greenwich, in the State of Connecticut. (See Complaint).

30. Respondents did not by coercion, intimidation, threats, or promises of benefits attempt to induce or encourage the carpenters employed on said construction job, to engage in a strike or a concerted refusal to work on said job.

31. In the erection of the house in Greenwich, Connecticut, the alleged picketing was peaceful, without any force or violence.

32. This proceeding is exclusively based upon the provisions of the "Labor Management Relations Act of 1947."

33. Said Act did not become effective, so far as this proceeding is concerned, until June 23rd, 1947.

34. Until such Act became effective, all of the acts of Respondents complained of in the complaint herein, were legal and permissible.

35. That the said construction job at Greenwich, Connecticut, is in no manner whatsoever involved in Interstate Commerce. 306

36. The Greenwich job is exclusively an intra-state matter.

37. The wearing of the placard by Patterson did not constitute or create evidence of an unfair labor practice.

38. The wearing of such placard by Patterson constituted only an expression by Patterson of his views, argument or opinion and the dissemination thereof by written, printed, visual form, without any threat of reprisal or force or promise of benefit.

39. Local 543 of the Brotherhood of Carpenters and Joiners of America, affiliated with the A.F.L., is a Local Union having jurisdiction only in the County of Westchester in the State of New York.

40. Said Local 543 has no jurisdiction in the State of Connecticut, where the Langer job was being performed.

41. That the National Labor Relations Board only has jurisdiction where Interstate Commerce is involved.

42. That Interstate Commerce is not here involved.

43. That the National Labor Relations Board has no jurisdiction in this matter.

44. That the National Labor Relations Board lacks jurisdiction over the subject matter set forth in the complaint.

45. That the complaint fails to state a charge against Respondent upon which relief can be here granted.

46. That the provisions of the Labor Management Relations Act of 1947, which the complaint seeks to enforce, are in violation of the Constitution of the United States, in that it tends to deprive Respondents of the Right of Freedom of Speech.

47. That because of the small gross annual business conducted by Langer, the National Labor Relations Board, should decline jurisdiction herein.

48. That anything said or done by Respondents in connection with this matter came within the express provisions of Section 8, subdivision 6, paragraph C, of the Labor Management Relations Act of 1947.

307 49. That the attempt of the National Labor Relations Board to enjoin or restrain Respondents from expressing their views, arguments or opinions as to the activities of Langer are in violation of the Constitution of the United States.

50. That the proceeding should be dismissed.

CONCLUSIONS OF LAW 308

1. That Samuel Langer is not engaged in commerce within the meaning of the Labor Management Relations Act of 1947.

2. This proceeding is exclusively based upon the provisions of the "Labor Management Relations Act of 1947."

3. Until such Act became effective, all of the acts of Respondents complained of in the complaint here, were legal and permissible.

4. That the said construction job at Greenwich, Connecticut is in no manner whatsoever involved in Interstate Commerce.

5. The Greenwich job is exclusively an intra-state matter.

6. The wearing of the placard by Patterson did not constitute or create evidence of an unfair labor practice.

7. The wearing of such placard by Patterson constituted only an expression by Patterson of his views, argument or opinion and the dissemination thereof by written, printed, visual form, without any threat of reprisal or force or promise of benefit.

8. That the National Labor Relations Board only has jurisdiction where Interstate Commerce is involved.

9. That Interstate Commerce is not here involved.

10. That the National Labor Relations Board has no jurisdiction in this matter.

11. That the National Labor Relations Board lacks jurisdiction over the subject matter set forth in the complaint.

12. That the complaint fails to state a charge against Respondents upon which relief can be here granted.

13. That the provisions of the Labor-Management Relations Act of 1947, which the complaint seeks to enforce, are in violation of the Constitution of the United States, in that it tends to deprive Respondents of the Right of Freedom of Speech.

14. That because of the small gross annual business conducted by Langer, the National Labor Relations Board should decline jurisdiction herein.

309 15. That anything said or done by Respondents in connection with this matter came within the express provisions of Section 8, subdivision 6, paragraph C, of the Labor Management Relations Act of 1947.

16. That the attempt of the National Labor Relations Board to enjoin or restrain Respondents from expressing their views, arguments or opinions as to the activities of Langer are in violation of the Constitution of the United States.

17. That the proceeding should be dismissed.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., AND WILLIAM PATTERSON and SAMUEL LANGER	Case No. 2-CC-40

Messrs. James V. Altieri and *Jack Davis*,
for the General Counsel.
Mr. Sydney A. Syme, of White Plains, N. Y.
for the Respondents.
Mr. Samuel Langer, of Port Chester, N. Y.,
for Samuel Langer.

INTERMEDIATE REPORT
and
RECOMMENDED ORDER

Upon an amended charge filed on June 16, 1948, by Samuel Langer, an electrical contractor herein called Langer, the General Counsel of the National Labor Relations Board,[1] by the Regional Director for the Second Region (New York, New York), issued a complaint dated June 24, 1948, against International Brotherhood of Electrical Workers, Local 501, A. F. of L., and William Patterson, herein called IBEW and Patterson, respectively, and jointly called the Respondents, alleging that the Respond-

[1] The General Counsel and his representatives in this case are referred to as the General Counsel; the National Labor Relations Board, as the Board.

ents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (4) (A), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon IBEW, Patterson, and Langer.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondents: (1) in violation of Section 8 (b) (4) (A) of the Act, "by coercion, intimidation, threats and promises of benefits, and by picketing," on or about April 16, 1948, "induced and encouraged the employees" of Nicholas Deltorto,[2] a carpenter contractor herein called Deltorto, "to engage in a strike and a concerted refusal in the course of their employment to perform services" for Deltorto or for Giorgi Construction Company, a general contractor herein called Giorgi, on a residence then under construction in Greenwich, Connecticut, "an object thereof being to force or require" Giorgi to cease doing business with Langer; (2) have threatened and
312 now threaten, in violation of Section 8 (b) (4) (A) of the Act, to induce employees of other employers to engage in a strike or concerted refusal to perform services for said other employers, with an object of forcing or requiring said other employers to cease doing business with Langer; and (3), by the foregoing activities, have "restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act," in violation of Section 8 (b) (1) (A) thereof. In addition, the complaint set forth, in paragraphs (1) through (7), various allegations as to the ramifications of the business of Langer in relation to com-

[2] The spelling of this name, which appears in the complaint as Deltoro has been conformed to the proof, as has that of Giorgi, which appears in the complaint as Georgi.

merce; in paragraphs 8, 9, 10, 11, and 13, various allegations concerning the status and interrelationships of Patterson, IBEW, and other labor organizations, including two building trades councils;[3] and, in paragraphs 12 and 14, certain allegations concerning the status and contractual relationships of Giorgi, Deltorto, and Langer.

On July 13, 1948, IBEW and Patterson, by their attorney, filed their joint answer,[4] which in essence denied that the Respondents had engaged in unfair labor practices; denied that Langer's operations involved "premises engaged in the production of goods" for interstate commerce; denied knowledge of allegations concerning Langer's operations contained in paragraphs 2 through 7; denied knowledge of the status or contractual relationships alleged in paragraph 14; and was silent as to the allegations concerning the status and interrelationships of the Respondents and the labor organizations, set forth in paragraphs 8, 9, 10, 11, and 13 of the complaint.[5] In addition, the Respondents' answer set up several special defenses. Among these were that the Board lacked jurisdiction in the instant matter because the construction involved, a single residential building in Greenwich, Connecticut, was exclusively an intrastate matter, and that the provisions of the Act here involved tend to deprive the Respondents of "Freedom of Speech," in violation of the Constitution and Bill of Rights of the United States and of the Constitution and Bill of Rights of the State of New York.

Pursuant to notice and to duly issued orders of post-

[3] The other labor organizations are Local 543 of United Brotherhood of Carpenters & Joiners of America, A. F. of L., herein called Carpenters; the Building and Construction Trades Council of Westchester County, New York, herein called the Westchester Council; and the Greenwich Building and Construction Trades Council of Greenwich, Connecticut, herein called the Greenwich Council.

[4] All participation by the Respondents has been such joint participation.

[5] It is clear from the record that the Respondents intended that such silence be treated as an admission of said allegations.

ponement, a hearing was held on August 4, 5, and 6, 1948, at Port Chester, New York, before Earl S. Bellman, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondents were represented by counsel and participated in the hearing.[6] Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the opening of the hearing, the Respondents moved to dismiss the complaint and the proceedings on the grounds that the Board should "decline jurisdiction" because of Langer's "small gross annual business," that the facts alleged did not state a violation of the Act, and on several other grounds similar to the special defenses in their answer. Counsel for Respondents filed a memo-
313 randum in support of the motion to dismiss and, along with the General Counsel, argued the motion orally. The undersigned denied said motion without prejudice to its renewal.

At the close of the General Counsel's case, a broad motion to conform the pleadings to the proof was granted to the limited extent of conforming minor matters such as names and dates; to this limited ruling the Respondents did not object. The Respondents renewed their motion to dismiss; it was denied without prejudice to its renewal. The Respondents then asked that the record show that the undersigned had also served as the Trial Examiner in a certain case, referred to during the hearing (and hereinafter) as the "Denver case."[7] The Respondents then sub-

[6] Samuel Langer, while present throughout the hearing, evidenced no desire to participate, except that he testified when called as a witness by the General Counsel.

[7] That case, in which the undersigned has issued his Intermediate Report (IR-1680), was *Matter of Denver Building and Construction Trades Council, et al.* and *Gould & Pieisner*, Case No. 30-CC-2. For the decision of United States District Judge Symes, District of Colorado, denying an injunction sought by the General Counsel in that case, see *Sperry, et al.* v. *Denver Building and Construction Trades Council, et al.*, 21 LRRM 2712 (March 30, 1948); 21 LRRM 2572 (March 31, 1948).

mitted an exhibit, and rested without calling witnesses. Thereupon the Respondents renewed their motion to dismiss on all ground previously stated. The undersigned reserved ruling. Said motion is in part granted and in part denied, in accordance with the conclusions and recommendations hereinafter made.

At the close of the hearing, the parties were afforded opportunity to argue orally before the undersigned and to file briefs and/or proposed findings of fact and conclusions of law. The parties waived oral argument, but certain questions addressed by the undersigned to counsel were discussed briefly on the record. After the hearing, pursuant to extension by the Chief Trial Examiner of time for filing to September 1, 1948, the General Counsel filed a brief and the Respondents jointly filed a brief and proposed findings and conclusions.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:[8]

FINDINGS OF FACT

I. The Business Relationships Involved; the Question of Commerce.

The focal point of the activities involved in this case was a private house being constructed in Glenville, a subdivision of Greenwich, Connecticut. In December 1947, Giorgi Construction Company, a partnership with its place of business located in Port Chester, New York, entered into a general contract with the owner for the construction of this Greenwich house. The total contract price of the house,

[8] It should be noted that there is presently in effect, pending the final adjudication of the instant matter by the Board, a restraining order entered pursuant to Section 10 (1) of the Act, which was entered, with the consent of the Respondents and without hearing witnesses, by United States District Judge William Bondy, Southern District of New York, Civil No. 46-366, on July 14, 1948.

upon which construction began about the middle of December 1947, was $15,200. Giorgi performed part of the work, evidently mostly masonry work, on the house with its own employees. It subcontracted such work as the carpentry and the electrical work, as appears more fully below.

In performing work on the Greenwich house, Giorgi used such materials as sand, gravel, cement, lime, rock concrete
314 blocks, bricks, flagstone, flue pipe, wire lath, and corner bead. The masonry materials used, valued at approximately $1,800, were purchased from F. C. Mertz & Son, which delivered said materials from its Port Chester, New York, establishment to Giorgi at the Connecticut construction site.

During 1947, Mertz sold Giorgi, whose 1947 construction contracts totaled some $60,000, approximately $15,000 worth of masonry materials. During the first half of 1948, Mertz sold Giorgi about $6,000 worth of such materials. Giorgi is one of the "top" purchasers among Mertz' approximately 100 customers.[9] During 1947, Mertz' sales totaled $375,000. It purchased during that year materials valued at approximately $290,000. Mertz' volume of business for the first 6 months of 1948 has remained at about the same level. About 15 percent of Mertz' sales are made to customers outside the State of New York. Of the materials which it handles, principally sand, gravel, stone, brick, cement, plaster material, and sewer pipe, 30 percent is purchased outside the State of New York. For instance, during 1947, Mertz purchased approximately 20,000 barrels of cement at about $3.30 per barrel, about 90 percent of which came from Pennsylvania. It thus appears that dur-

[9] Most of the findings in the above paragraph are made on credited testimony of Walter A. Mertz, the owner of F. C. Mertz & Son, a proprietorship operating under that trade name. The findings in the preceding two paragraphs are made principally on credited testimony of Louis Giorgi, one of the two partners forming Giorgi. None of the testimony relied upon in this division of the Intermediate Report is contradicted.

ing 1947 Mertz paid about $59,400 for cement secured from Pennsylvania.

The carpentry work on the Greenwich house was subcontracted by Giorgi to Nicholas Deltorto, a carpenter contractor. The amount of the subcontract was $7,400.[10] Deltorto, a customer of Interstate Lumber and Mill Corporation, who purchased about nine or ten thousand dollars worth of materials from Interstate during the year's period from May 1, 1947, to April 30, 1948, purchased materials for the house from that firm.[11] Interstate delivered such materials to the house in Connecticut from its yards in East Port Chester, which also is in Connecticut. None of such materials appear to have crossed any State line in the trip from the yards to that house. However, 90 percent of the materials which Interstate purchased, such as lumber and millwork, the expenditure for which during 1947 was approximately $700,000, was secured from sources outside the State of Connecticut. Between 15 and 20 percent of Interstate's sales are made to customers in the State of New York.

The electrical work on the Connecticut house was subcontracted by Giorgi to Samuel Langer, the charging party herein, whose place of business is in Port Chester, New York. The contract price, which covered all of the electrical work to be done on the house, was $325. Langer had finished the "roughing in" prior to the events in mid-April 1948, discussed below, but thereafter did no further electrical work on the house, leaving the contract only par-

[10] It was Deltorto's two carpenter employees who left work on the house on April 16, 1948, upon picketing by IBEW under circumstances discussed below. Deltorto, who presently holds a "withdrawal card" from Carpenters, of which his two employees are members, testified that he could not tell with "any reasonable accuracy" the approximate total dollar volume of his business during 1947. The record does not show what part of Deltorto's $7,400 contract price went for materials.

[11] The findings concerning Interstate's business are made on credited testimony of Interstate's general manager, Peter Seligman.

tially completed. It is evident that the value of materials used and intended to be used by Langer on the house was not large.[12]

315 On the other hand, Langer's business relationships, like those of Giorgi and Deltorto, have numerous ramifications. In general, Langer's business which totaled $24,443.96 during the period from July 1, 1947, to July 1, 1948, falls into three classes: (1) installation of electrical wiring, fixtures, and equipment for light and power in new construction, including homes, commercial buildings, and industrial plants; (2) maintenance of electrical equipment in industrial plants; and (3) miscellaneous installation, repair, and replacement of electrical fixtures and equipment. Of Langer's $24,443.96 total business during the above specified year, $13,545.33 was of the first type, involving new construction,[13] and $4,814.33 was of the second type, maintenance work in industrial plants.

The materials used by Langer in his electrical business include various kinds of electrical wire, B-X cable, electrical conduit, fittings for conduit, fittings for B-X cable, outlet boxes, plugs, switch plates, lighting fixtures, motors, fans, and blowers. During the year's period from July 1, 1947, to July 1, 1948, $8,095.66 worth of such materials were purchased and delivered to Langer's Port Chester shop. The value of such materials which were secured from points outside the State of New York was $5,095.66. During the same year's period, the value of work which Langer performed outside New York, all of it on jobs in Connecticut,

[12] Louis Giorgi testified that Langer finished about 60 percent of the electrical work for which he had contracted. Langer testified that, in estimating electrical work he figured materials at about one-third of the contract price.

[13] During his testimony, upon which the findings as to his business are based, Langer testified that electrical work runs approximately 2 percent of the cost of new construction and estimated that the total cost of the various new construction projects upon which he did the electrical work during the above year was approximately $650,000 and that the cost of all materials used on those jobs was about $260,000.

was $8,402.54. Materials for those Connecticut jobs, one of which was the house specifically involved herein, were transported by Langer from his Port Chester shop to Connecticut sites. Langer estimated the value of the material thus transported from New York to Connecticut was approximately $2,700.

The evidence shows the general relation to commerce of the business of two wholesale electrical suppliers of which Langer is a customer, Mar Le Company, of Stamford, Connecticut, and Max Coldman, Inc., of New Rochelle, New York.[14] During 1947, Langer's purchases from Mar Le totaled approximately $6,000. During that same year, Mar Le sold approximately $800,000 worth of electrical supplies to its some 600 customers;[15] its volume of business remained about the same during 1948. Mar Le makes about 25 percent of its sales to places outside of Connecticut.[16] It purchased about 90 percent of its supplies, which in 1947 totaled some $600,000, from sources outside of Connecticut.

As to Max Goldman, Inc., from which Langer's purchases during 1947 totaled $2,575, Goldman's sales during 1947 to its approximately 250 customers totaled about $368,000, of which 2 percent was made outside New York. The volume of purchases of approximately 80 percent of Goldman's customers is not in excess of Langer's volume of purchases. 316
Goldman's 1947 purchases of electrical supplies, appliances, and fixtures totaled $321,000, of which approximately 70 percent was purchased from sources outside New York.

[14] The findings as to Mar Le are made upon testimony of its owner and general manager, Martin Levine; as to Goldman, upon the testimony of its president, Louis Stregger.

[15] It thus appears that Mar Le's customers averaged approximately $1,333 worth of purchases each per year, less than one-fourth of Langer's 1947 purchases.

[16] Stamford, Connecticut, where Mar Le is located, is some 10 miles east of Port Chester, New York, which is located on a river which forms part of the boundary line between New York and Connecticut.

Goldman's 1948 business has continued approximately the same as during 1947.[17]

That Langer performs electrical work on "premises engaged in the production of goods for interstate commerce," as alleged in the complaint, is established by the testimony of the presidents of three manufacturing establishments located in Port Chester, New York, Brassner Manufacturing Co., Inc., herein called Brassner, Curvlite Products, Inc., herein called Curvlite, and Bantam U. S. Toy, Inc., herein called Bantam.[18]

Brassner, which manufactures lighting fixtures, sells approximately 95 percent of its products outside the State of New York and secures about 50 percent of its material from points outside New York. Its sales of products during 1947 totaled over $300,000; its purchases of materials that year amounted to approximately $150,000. Brassner's business during 1948 has been about the same as during 1947. Langer has been relied upon to perform Brassner's electrical installation and repair work during 1947 and 1948, receiving $2,774.38 for some six jobs in 1947 and $597.53 for three jobs in 1948.

Curvlite, which manufactures surgical instruments and appliances, sells practically 99 percent of its products outside the State of New York and purchases all of its materials outside New York. Its 1947 sales were approximately $300,000 and its expenditures for materials about $150,000. Curvlite's business during 1948 has been running somewhat above its 1947 level. During 1947 and 1948, Langer has performed electrical repair and installation of

[17] The figure given in the record for Langer's purchases during 1948 from Mar Le is about $500 and from Goldman $727, but it is not clear from the record how many months during 1948 are included in those figures.

[18] The respective presidents, upon whose credited testimony the findings as to their respective corporations are made, are Julius Brassner of Brassner, Jerome L. Bayer of Curvlite, and Frank Bonafied of Bantam.

equipment necessary to Curvlite's manufacturing operations, receiving $408.25 for eight jobs in 1947.[19]

Bantam, which manufactures soft toys such as plush animals stuffed with cotton, sells slightly over 70 percent of its products outside the State of New York and secures approximately 85 percent of its materials from sources outside New York, principally from Rhode Island and North Carolina. During 1947, Bantam purchased some $110,000 worth of materials and sold about $250,000 worth of manufactured products. Compared with its 1947 sales, Bantam's 1946 sales were a little lower and its 1948 sales somewhat higher. During 1946, Bantam paid Langer $4,200 for electrical work, consisting principally of wiring for lighting and manufacturing purposes two floors of factory quarters to which Bantam was then moving. Langer performs all of Bantam's electrical work. For such services Langer received $270 in 1947 and $158.60 in 1948.[20]

From all of the foregoing, it is apparent that numerous strands in the web of commerce, several of which crossed State lines, were interlaced in the construction of the Green- 317
wich house.[21] The fact that the value of the materials directly involved in its construction was not large is not controlling, since that construction was embedded in a

[19] Figures for work performed in 1948 were not available.

[20] Such figures for 1948, for Bantam and also for Brasmer, were for only part of that year.

[21] That the web of commerce involved in the building and construction industry generally is nation-wide in scope, involves large interchanges of materials in interstate commerce, is highly complex in its requirements as to materials, has ramifications substantially affecting numerous and varied types of production activity, and accounts annually for an aggregate expenditure of many billions of dollars, are among the things shown by compilations of facts and figures, chiefly from Government sources, introduced in evidence by the General Counsel. For instance, the value of all construction work in the United States during 1946 was $15,667,000,000. New construction accounted for $10,007,000,000 of that total, of which $3,300,000,000 was for new private residential construction. While the undersigned does not rely on the material showing the general nature and extent of the building and construction industry in determining whether jurisdiction lies, the Board may wish to consider it in deciding whether to assert jurisdiction.

network of commercial relationships involving Langer, Giorgi, and Deltorto, and their respective suppliers, which relationships, in their ramifications as above set forth, manifestly affect commerce,[22] even if the services which Langer renders to firms manufacturing goods for interstate commerce, Brassner, Curvlite, and Bantam, were to be disregarded.

In the undersigned's opinion, the fact that the commercial relations in this case focused at a point practically on the New York-Connecticut line is not material. Substantial amounts of construction take place at or near State lines.[23] Nor does the undersigned find anything in the Act or in its legislative history which would warrant recommending, in line with the Respondents' position, that the Board decline jurisdiction because of Langer's small gross annual business.[24]

On the question of jurisdiction, careful consideration has been given to the opinion, so extensively quoted by the Respondents, of District Judge Symes in the Denver case. The undersigned believes, however, that a more recent decision of the United States Court of Appeals for the Tenth Circuit, in a building and construction industry case involving the commerce issue, reflects the controlling opinions of the Supreme Court on the commerce question. Portions of that decision, *United Brotherhood of Carpen-*

[22] The evidence on commerce adduced in the instant matter plainly differentiates it from the case cited by the Respondents, *Matter of Walter J. Mentzer, et al.*, Case No. 6-CA-47, in which the Trial Examiner, in his Intermediate Report (IR-1662), recommended dismissal of the complaint.

[23] Figures introduced in evidence by the General Counsel, computed and compiled from census sources, show that during 1939, in 13 large cities situated on State lines, 30,470 establishments which had 225,454 employees performed construction work valued at $1,053,251,000.

[24] It should be noted that relatively small establishments are prevalent in the construction industry. For instance, of the 215,050 establishments in the United States engaged in 1939 in construction work, 187,524, or 87.2 percent, did less than $25,000 worth of business that year. Incidentally, it should be noted that price levels in 1939 were substantially lower than at present.

ers, et al. v. *Sperry, et al.*, No. 3654, decided November 2, 948, (23 L.R.R.M. 2040), follow:

The supreme, plenary, and complete power of Congress under the Constitution to regulate interstate commerce is without restriction or limitation, except that prescribed in the Constitution; and within the reach of that paramount authority lies the power to safeguard such commerce against substantial burdens or obstructions, no matter the source from which the encroachment comes. And in the exertion of its constitutional authority to protect interstate commerce, Congress may regulate not only commerce itself but matters which affect, interrupt, or stifle interstate commerce. In other words, Congress may regulate not merely transactions or goods in interstate commerce, but activities which in isolation might be deemed to be local and yet in the course of the interlacings of business across state lines affect adversely interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Wickard* v. *Filburn*, 317 U. S. 111; *Polish National Alliance* v. *National Labor Relations Board*, 322 U. S. 643. And acts or practices having the effect of interrupting or otherwise adversely affecting interstate commerce are not immune from Congressional regulation and control merely because they grow out of labor disputes. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, *supra*; Cf. *Thomas* v. *Collins*, 323 U. S. 516. 318

The question whether or not practices of a given pattern may be deemed by Congress to affect interstate commerce in a harmful manner is not to be determined solely by the quantitative effect of the activities immediately involved. *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601; *Polish National Alliance* v. *National Labor Relations Board*; *supra*. And the power to protect interstate commerce against harmful encroachment may be exercised in such manner as to have application in individual cases in which the activities are of such character that when multiplied into a general practice they could reasonably exert adverse effect calling for preventive regulation. *Mandeville*

Island Farms, Inc. v. *American Crystal Sugar Co.*, 334 U. S. 219.

Everything considered, the undersigned concludes and finds that the facts of this case concerning commerce establish the jurisdiction of the Board. Whether the Board will assert its jurisdiction in the instant matter involves policy consideration upon which the undersigned expresses no opinion. However, it is assumed from the Board's recent decision in *Matter of Local 74, United Brotherhood of Carpenters, et al.*, and *Ira A. Watson Company, d/b/a Watson's Specialty Store*, 80 N. L. R. B., No. 91, hereinafter called the *Watson* case, that the Board will assert jurisdiction in cases such as that at bar where the building and construction industry is involved.[25]

II. The Respondents and Their Relation to Various Labor Organizations[26]

Respondent International Brotherhood of Electrical Workers, Local 501, A. F. of L., which has its principal office in Mount Vernon, New York, is a labor organization engaged in promoting and protecting the interests of its members. IBEW is affiliated with the American Federation of Labor, and is represented in and belongs to both the Building and Construction Trades Council of Westchester County, New York, and the Greenwich Building & Construction Trades Council of Greenwich, Connecticut.

319 Respondent William Patterson is the business representative of IBEW. He is engaged in promoting and protecting the interests of the members of IBEW and is an

[25] It is true that the Board has also declined to assert jurisdiction in a number of recent cases all of which, like the *Watson* case itself, are distinguishable on their facts from the instant matter. For an indication predating the *Watson* decision of special considerations believed to pertain to the building industry, see footnote 3 in the dissenting opinion in *Matter of Liddon-White Truck Co., Inc.*, 76 N.L.R.B. 1181, 1184.

[26] The findings in this section are based, in part, on undenied allegations of the complaint.

agent of IBEW. Patterson is also the representative of IBEW on the Westchester Council and is a "trustee" of that council.[27]

Local 543 of United Brotherhood of Carpenters & Joiners of America, A. F. of L., of which Deltorto's two carpenter employees are members, is a labor organization affiliated with the American Federation of Labor. Carpenters is a member of the Westchester Council. It is not a member of the Greenwich Council.[28]

The Westchester Council is a labor organization composed of the various locals of American Federation of Labor building construction trades organizations which are engaged in building and construction work in Westchester County, New York. In addition to IBEW and Carpenters, above discussed, the Westchester Council includes, among others, locals of such organizations as plasterers, bricklayers, and plumbers. In forming and joining the Westchester Council, the locals involved have "assumed reciprocal obligations and exchanged mutual benefits" and are "governed by a constitution and by-laws regulating and controlling the mutual and reciprocal activities."[29] The constitution and by-laws by which the Westchester Council is governed is that of the Building and Construction Trades Department of the American Federation of Labor, herein called the Department, which contains a subdivi-

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[27] These trustees, of which there are three, have "supervision over all funds and all property" of the Westchester Council. The record does not show who represents IBEW on the Greenwich Council or whether or not such representative of IBEW holds any office on that council.

[28] While the Greenwich house was being constructed in the area covered by the Greenwich Local of Carpenters, rather than in the area normally covered by Local 543, it is accepted practice under some conditions, as happened in the instant matter, for members of Carpenters' Local 543 to work on construction in the Greenwich area.

[29] The quoted material, the first part of which is stressed in the General Counsel's brief, is from the complaint.

sion entitled "Constitution and By-Laws to Govern Local Councils."[30]

The Greenwich Council is a labor organization similar to the Westchester Council. It is composed of locals operating in the Greenwich area, in which the Greenwich house was being constructed. As appears above, IBEW is a member of the Greenwich Council; Carpenters is not.

III. The Alleged Unfair Labor Practices

A. Chronology Of Events During 1948[31]

About March 16, Langer entered into a contract with Giorgi to perform the electrical work on the Greenwich house. By the middle of April, the roughing in part of that
320 work was completed. It was performed by Langer's two electricians, Dominick A. Carlucci and Joseph D. Vitti, neither of whom was a member of IBEW. Langer's use of these two employees in performing that electrical work precipitated the events now to be considered.[32]

[30] While the record shows that the Westchester Council has no constitution or bylaws other than that of the Department, it does not show what constitution and bylaws apply to the Greenwich Council.

[31] Unless otherwise specified, all dates in this chronology are in the year 1948, and all findings therein are made upon credited testimony with which there is no evidence in substantial conflict.

[32] While the undersigned has given careful consideration to the evidence adduced concerning the history of the dispute between Langer and IBEW, he considers it unnecessary to make detailed findings thereon. In brief, it is clear that Carlucci and Vitti (both of whom had worked for Langer when he had been in the electrical business in Port Chester as a non-union contractor from 1930 to 1940, prior to the war, and who were the only electricians in Langer's employ during the construction of the Greenwich house) were not members of IBEW, although both had tried to join IBEW after having returned from service in the Armed Forces. In fact, Langer, about the time he had resumed business in October 1944 after some 4 years absence from Port Chester during the war, had entered into a contract with IBEW after Patterson had assured him that IBEW would take in his former employees (who were then still overseas and who had written asking for their jobs back), provided these former employees were "good mechanics." Subsequently, both Carlucci and Vitti returned to Langer's employ, IBEW acquiescing therein for a period, apparently because there was a labor shortage. However, in May 1947, Langer, in compliance with IBEW'S demand that he lay off "permit men," discharged Carlucci and Vitti and hired two "card men." Those two members of IBEW were in Langer's employ for only a short time. Within 2 weeks and without the approval of IBEW, Carlucci and Vitti returned to Langer's employ; they continued in his employ thereafter. Rather involved developments followed the return of Carlucci and Vitti to Langer's employ. In any event, Langer eventually was

About the middle of April, after Langer's electricians had completed the roughing stage of the electrical work,[33] which must be done before the walls of the house can be finished, Patterson visited the Greenwich house on two occasions, a day or so apart. On the first of these occasions, shortly before April 16,[34] Patterson talked with Nicholas Deltorto, whose two carpenter employees, Ralph Ciancia and Angelo Bova, both of whom were members of Carpenters, were the only men then at work on the job. Patterson told Deltorto that the electrical work was being done by a non-union electrical outfit. Deltorto stated that he did not know who was doing the electrical work, as the roughing had been done during a period of a few days when his carpenters were not working on that job.

Patterson also spoke to one of the carpenters, Ciancia, on the occasion of this first visit, shortly before April 16. Patterson asked Ciancia if he knew that the job was non-union. Ciancia replied that the did not know that there were non-union men on the job.[35] 321

informed, at a meeting on some unspecified date in August 1947, by the chairman of the Trade Board, a body composed of representatives of the Electrical Contractors Association and of IBEW, that he no longer had a contract with IBEW, and that under the Act no more "closed-shop agreements" could be signed. Whatever may have been the basic factors complicating the relationship between IBEW and Langer, admittedly Langer was not a union contractor during the period of the construction of the Greenwich house. In connection with this background, it should be noted that these is no allegation in the complaint of any violation of Section 8 (b) (2) of the Act.

[33] It should be noted that Patterson had observed Langer at the Greenwich house while the electrical work was under way.

[34] One of these occasions was undoubtedly on April 16. The undersigned believes, from his study of all of the evidence, that the April 16 visit was the second of the two visits and presents the sequence herein on that basis.

[35] While Ciancia was uncertain as to whether his conversation with Patterson, who was not called as a witness, took place on Patterson's first or his second visit, the undersigned believes, from his analysis of the testimony of Deltorto, Ciancia, and Bova, reluctant but on the whole credible witnesses presented by the General Counsel, that Ciancia and Bova were working together on a scaffold on the occasion of Patterson's second visit, that Patterson spoke to neither of them during his second visit, and that the exchange between Patterson and Ciancia took place on the first visit. In any event, the record does not establish that Patterson made any comment to either Bova or Ciancia on either visit other than the question and answer set out above.

On April 16, Patterson again visited the Greenwich house when Deltorto, Ciancia, and Bova were the only ones present. Ciancia and Bova were working together on a scaffold at the time. Patterson talked only with Deltorto, but Bova, at least, overseard some of the conversation.[36] Patterson, in substance, told Deltorto that the job was unfair because the electrical work was being done by a non-union organization. As upon the previous occasion, Deltorto replied that he "didn't know about that." Patterson commented that he "was sorry," and walked in the direction of his car. Within 5 minutes, Patterson was picketing the house with a cardboard placard which read: "This job is unfair to organized labor," and which also carried the identifying number of the local of IBEW, "501," of which Patterson was the business representative.[37]

A few minutes after Bova had overheard Patterson talking to Deltorto, he noticed Patterson walking up and down with the placard. He suggested to Ciancia that they get down off the scaffold to "see what it's all about." This they did. After they had read the legend on the placard, [38] Bova said that he did not know what to do. Ciancia stated, "There's only one thing to do. Let's go home."[39]

Having determined to leave, Bova and Ciancia "quit

[36] Bova testified that he heard Patterson say, in a tone so low that he could not get all of the conversation, "something about unfair" and about "a non-union electrician being employed."

[37] The quoted legend is from Deltorto's and Ciancia's testimony. Deltorto did not mention seeing anything further. However, Ciancia testified that there also was a number which he could not remember. Bova testified that "501," or something like that, appeared on the placard. In the memorandum filed by the Respondents at the outset of the hearing in support of the motion to dismiss, the placard carried by Patterson was represented as reading: "This job is unfair to organized labor: I. B. E. W. 501 A. F. L." It is noteworthy that there is nothing in the record suggesting that the name of either the Westchester Council or the Greenwich Council appeared on this picket sign.

[38] There is no evidence that either of them said anything to Patterson or that Patterson said anything to either of them at that time.

[39] The findings in the above paragraph, including the quoted material, are based largely on Bova's testimony, which is more detailed than, but is not in essential conflict with, that of Ciancia.

right then and there." They went to Deltorto and said, 322
"We're going" or "Let's go."[40] All three thereupon left the construction site. Apparently Patterson's picketing discontinued shortly thereafter.

On April 16, after leaving the construction site, Deltorto telephoned the general contractor, Giorgi, and told him that "his carpenters had walked off the job because the electrical delegate had picketed the job." He also told Giorgi that he understood that the electrical contractor was non-union and added, "Of course, you know we are union." Giorgi told Deltorto, "All right, I'll have that straightened out, and I'll let you know when everything is straightened out."[41]

On the evening of April 16, Patterson telephoned Giorgi; told him that Langer was "unfair"; stated that he "would have to replace Samuel Langer with a union contractor in order to complete the job"; and said that if Giorgi did not replace Langer he "would not receive any skilled trades to finish the rest of the work."[42]

On April 17, Giorgi telephoned Langer; told him what had happened; and informed Langer that in order for Giorgi to finish the house and gets its money, Giorgi was going to have to get a union electrical subcontractor to do the rest of the electrical work. Langer verbally agreed to release Giorgi from his contract, stating that he would step aside so that a union contractor could take over.[43] Thereafter Langer performed no further work on the Greenwich house.

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[40] Deltorto so testified. He also testified that he could not remember Bova and Ciancia giving him any explanation for leaving, but that they may have said, "It's too warm. We ought to go home," or something like that.

[41] The first of the above quotations is from Giorgi's testimony; the second two from Deltorto's. Their testimony is supplementary in nature.

[42] The quoted material is from credited and uncontradicted testimony of Giorgi.

[43] The findings as to this telephone conversation are made upon the testimony of Giorgi and Langer which substantially accords as to what transpired.

Giorgi made arrangements with a union electrical subcontractor to finish the electrical work on that project.

Several days after April 16, the date upon which Giorgi had told Deltorto that he would do so, Giorgi informed Deltorto that there was no longer any trouble on the Greenwich house, as the matter had been "straightened out." Thereupon Deltorto's carpenters returned to work on that project.

On May 4, Patterson visited a site in Port Chester, New York, where Middletown Recreation Center, Inc., was engaged in constructing some stores, and there talked with Abraham Abel, Middletown's treasurer, who was in charge of that construction. After ascertaining that Abel was actually in charge, Patterson asked Abel who was doing the electrical work. Upon being informed that Langer was, Patterson asserted that Langer was "no good with the union" and said that if Langer did the electrical work, he would "put a picket line in front of the place." In the course of the discussion, Abel insisted that Langer had a contract; Patterson insisted that if the project were picketed, "the job would stop, because no one would pass the picket line." While construction of the Middletown job continued without picketing, no electrical work had yet been performed on that project at the time of the hearing.[44]

B. Conclusions

Sections 8 (b) (1) (A)

The complaint alleges violation of Section 8 (b) (1) (A) of the Act. That section, when read in conjunction with rights guaranteed in Section 7 of the Act, provides, so far
323 as applicable to the facts and the contentions of this case, that it shall be an unfair labor practice for a labor organiza-

[44] The quotations above are from credited and undenied testimony of Abel.

tion or its agents to restrain or coerce employees in their right to refrain from engaging in concerted activities.

The General Counsel contends that Patterson's picketing compelled Deltorto's carpenters to quit their jobs against their will after they "obviously had chosen to exercise their privilege to refuse to strike."

It appears from the facts set out in the foregoing section of this Intermediate Report that, before Patterson started picketing on April 16, 1948, both of Deltorto's carpenters, Ciancia and Bova, realized that Patterson's position was that the job they were working on was "unfair."[45] They did not decide, however, to leave work until after they had read Patterson's picket sign. The undersigned is persuaded, from his study of the testimony of Ciancia and Bova and from his observation of their demeanor as witnesses, that Patterson's picketing was the effective stimulus in producing their action in leaving work that day. It is evident, further, from all that transpired on April 16, that Deltorto, who left the job with his carpenters, understood that the carpenters were leaving because of Patterson's picketing and that Deltorto made no effort to dissuade them from leaving.

There is no dispute that Patterson is an agent of IBEW. His action in wearing the picket sign thus is chargeable to IBEW.[46] This picketing by Patterson was the effective stimulus causing the carpenters to leave their jobs. Nevertheless, the undersigned is not persuaded that any violation of Section 8 (b) (1) (A) of the Act was thereby committed.

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[45] Patterson personally had asked Ciancia on the occasion of his first visit if he knew that the job was non-union, and Bova had overheard enough of Patterson's conversation with Deltorto on April 16 to know that Patterson was contending that the job was unfair.

[46] The undersigned is satisfied, for reasons which appear more fully below, that Patterson's picketing, on the evidence in this record, cannot be ascribed to or considered joint action or a common enterprise with any other labor organization, and that it was not a "signal."

This is so because study of the Act's legislative history and of recent decisions of the Board convinces the undersigned that Patterson's action, whatever its status under Section 8 (b) (4) (A) and regardless of any protection afforded by Section 8 (c) of the Act,[47] is not comparable to the kinds of threats, physical violence, and intimidation of employees which Congress intended to prohibit by Section 8
324 (b) (1) (A).[48] Accordingly, in line with the legislative history and the reasoning of the Board in the two decisions cited in the margin, the undersigned concludes and finds that the Respondents have not violated Section 8 (b) (1) (A) and will recommend dismissal of the complaint with respect thereto.[49]

2. The Alleged Violation of Section 8 (b) (4) (A) By Threats to "Other Employers"

The complaint alleges that the Respondents threatened "to induce and encourage employees of other employers" to strike or refuse to perform services in order to force

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[47] Section 8 (c) provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

[48] See the summary of the legislative history of the Act in the Board's decision in *Matter of National Maritime Union of America, et al.*, 78 N.L.R.B. 971. The Board in that case found, with one member dissenting, no violation of Section 8 (b) (1) (A), although violations of Section 8 (b) (2) and 8 (b) (3) were found. In so doing, the Board stated that the legislative history "strongly suggests" that Congress, in enacting Section 8 (b) (1) (A), was interested in eliminating the use by unions and their agents of "physical violence and intimidation" as well as "threats of economic action against specific individuals in an effort to compel them to join." While the union's action in that case, as in the instant matter, had as its purpose an illegal objective, the action was "peacefully conducted" and had as its "*prime* objective" the protection of the interests of its own members. Section 8 (c) was not discussed by the Board in deciding the issue. See also the Board's more recent decision in the *Watson* case, *supra*, 80 N.L.R.B., No. 91. In that case, although it was found that the union engaged in conduct violative of Section 8 (b) (4) (A), the behavior of the single picket carrying an "unfair to organized labor" placard was entirely peaceful, and the Board found no violation of 8 (b) (1) (A), relying largely on reasons grounded in the legislative history of the Act.

[49] See also footnote 53 below.

said other employers to cease doing business with Langer. This allegation, in paragraph 16 of the complaint, patently refers to employers other than Deltorto and Giorgi. There is evidence as to only one such other employer, Middletown.

The facts found above show that on May 4, 1948, Patterson, in effect, threatened Abel, who was in charge of a construction project for Middletown, that he would put a picket line which "no one would pass" in front of that project if Langer, who was "no good" with IBEW, did the electrical work on that project. Since there is no dispute that Patterson is IBEW's agent, the undersigned is of the opinion, for reasons which appear too obvious to warrant elaboration, that the allegation of paragraph 16 of the complaint is supported by the evidence, if the behavior alleged and proved falls within the ambit of the activity proscribed by Section 8 (b) (4) (A) of the Act.

Section 8 (b) (4) (A) provides that it shall be an unfair labor practice for a labor organization or its agents:

> (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

Scrutiny of the above provisions, analysis of the issues and contentions in the instant matter and in other cases involving Section 8 (b) (4) (A), and study of the legislative history of the Act, satisfy the undersigned that, where certain objectives are involved, Section 8 (b) (4) (A) prohibits

a labor organization or its agents from engaging in *four general types of activities:*[50]

325 (1) Striking—wherein the labor organization withdraws the services of its own members;

(2) Boycotting on the job—wherein the labor organization's own members, in the course of their employment, concertedly refuse to handle certain goods or render services;

(3) Inducing or encouraging employees, not members of the union taking the action, to go on strike;

(4) Inducing or encouraging employees, not members of such union, to engage in an on-the-job-boycott—wherein such employees, in the course of their employment, concertedly refused to handle certain goods or render services.

It is noteworthy that the first and second types of activities embrace action taken by a labor organization through its own members while the third and fourth types involve *inducing or encouraging* non-member employees to take action. It should specifically be noted that *threatening an employer* to take any of the above types of action is not one of the kinds of activity specified in Section 8 (b) (4) (A).

While the objective of Patterson's conversation with Abel on March 4 was manifestly within the ambit of Section 8 (b) (4) (A), it cannot be said that Patterson's action falls into any of the types of activity proscribed by that section. At most, Patterson was threatening an employer that if Langer's services were used for the electrical work, IBEW would take action calculated to induce or encourage employees, obviously not members of IBEW, to do no work on the premises. The language of Section 8 (b) (4) (A) does not, by its terms, bar unions from using *threats to*

[50] See the undersigned's Intermediate Report in the Denver case, footnote 44.

employers to accomplish objects covered by Section 8 (b) (4) (A). Nor does a consideration of the Act as a whole or of the legislative history thereof appear to warrant any such construction.[51] Accordingly the undersigned concludes and find, without reliance on any protection which Section 8 (c) might afford, that the *mere threat to an employer* to engage in activity which otherwise would appear to be prescribed by Section 8 (b) (4) (A) does not constitute a violation of that section,[52] or of Section 8 (b) (1) (A).[53] Accordingly it will recommend that such allegations of the complaint be dismissed.

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3. The Alleged Violation of Section 8 (b) (4) (A) by Patterson's Picketing

The facts concerning Patterson's picketing of the Greenwhich house on April 16, 1948, are detailed in the above chronology of events. In Section III, B. 1, in discussing the alleged violation of Section 8 (b) (1) (A), conclusions which are equally applicable here have already been set forth relative to that picketing and its effect on Deltorto's two carpenters.

In brief, the Respondents contend, contrary to the position of the General Counsel, that Patterson's picketing con-

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[51] The facts in the instant case are clearly distinguishable from those in the Denver case, which involved duly authorized joint strike action, one phase of which was notifying employers thereof. In the Denver case, the undersigned pointed out that his holding therein was "not to be interpreted as a holding that a *mere threat to strike* for a proscribed purpose, standing alone, would constitute a violation of Section 8 (b) (4) (A)." (Emphasis in original.)

[52] This is not to say, however, that such a threat would necessarily be barred from consideration in determining the extent of any remedial order which might be justified, if other activities of the Respondents were found to constitute violations of Section 8 (b) (4) (A).

[53] While paragraph 18 of the complaint alleges that such threats as alleged in paragraph 16 are also violative of Section 8 (b) (1) (A), the General Counsel's brief does not mention threats to other employers in discussing the evidence of violation of Section 8 (b) (1) (A). In any event, for reasons set out above, the undersigned is satisfied that they do not constitute such violations.

stituted activity protected by constitutional provisions and by Section 8 (c), of the Act. Constitutional issues aside for the present, we consider now the applicability of Section 8 (c). The Respondents, in their proposed findings and conclusions, present the following propositions:

(a) The wearing of the placard by Patterson did not constitute or create evidence of an unfair labor practice.

(b) The wearing of such placard by Patterson constituted only an expression by Patterson of his views, argument or opinion and the dissemination thereof by written, printed, visual form, without any threat of reprisal or force or promise of benefit.

As to the applicability of Section 8 (c), the General Counsel contends that the Respondents "may not avail themselves of the exemption provided by Section 8 (c)" for two reasons which are summarized in the brief as follows:[54]

> First, Patterson's conduct at the job site cannot be regarded as simply an expression of views, argument, or opinion within the meaning or protection of Section 8 (c).
>
> Secondly, assuming, *arguendo*, that Patterson's activities could be designated as the expression of views, arguments, or opinion within the meaning of the Section, such expression unquestionably contained a "threat of reprisal" and a "promise of benefit."

Before proceeding to analyze the foregoing conflicting contentions, consideration will be given to the general applicability of the provisions of Section 8 (c) to Section 8 (b) (4) (A). Where, as here, an objective clearly within the ambit of 8 (b) (4) (A) is established by the evidence, Section 8 (c) does not, in the undersigned's opinion, usu-

[54] The General Counsel apparently does not take the position that Section 8 (c) has no applicability to Section 8 (b) (4) (A).

ally operate to protect actions of the first or second general types set out above. This is so because action by a labor organization through its own members usually involves instructions, signals, directions or orders, in short, various types of verbal acts which carry the authority of the organization when addressed to its own members. Such verbal acts are of a different order from techniques used "to induce or encourage" non-members to take desired action.

Thus, in cases such as the one at bar, where behavior to be considered falls into either the third or the fourth general type above stated, it would appear that the behavior complained of must be tested to determine whether the method used "to induce or encourage" non-members was, in fact, the "expressing of views, argument, or opinion, or the dissemination thereof" which, realistically appraised, 327
contained "no threat of reprisal or force or promise of benefit."[55]

Judge Symes, in his opinion in the Denver case as to blacklisting applied the exemptions of Section 8 (c) to Section 8 (b) (4) (A). Several Trial Examiners have held in recently issued Intermediate Reports that 8 (c) is applicable to 8 (b) (4) (A). The Board, in its recent decision in the *Watson* case, by adopting findings in the Trial Examiner's Intermediate Report which were made in connection with a holding that peaceful picketing was not a violation of Section 8 (b) (1) (A), held that the enactment of Section 8 (c) "definitely established" that "the Congress had no

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[55] It should be noted that Patterson's picketing falls into a distinctly different frame of reference from the picketing in the Denver case. The undersigned found that the picketing in the Denver case was duly authorized direct strike action of the first general type and, as a continuing verbal act which constituted the clearly understood strike signal, was not protected by Section 8 (c).

intention of interfering with the normal rights of *either an employer or of a union* to effectively present arguments and opinions involving labor matters." (Emphasis supplied.) The *Watson* decision also adopted the following language of the Trial Examiner:

> Section 8 (c), above quoted, *established in statutory form decisional law already in existence* eliminating as an unfair labor practice statements of opinions, or arguments in any form, by an employer to his employees (provided it contains no threats or promises); *and extended the doctrine to similar statements by unions.* (Emphasis supplied.)

Section 8 (c) states in unambiguous language that activities meeting certain requirements "shall not constitute or be evidence of an unfair labor practice *under any of the provisions of this Act.*". (Emphasis supplied.) There is nothing in the Act, so far as the undersigned is able to determine, which negates or limits the foregoing language. Thus, on its face, and without any evident reservation, the Act states in Section 8 (c) that that section must be read into all other sections of the Act. Further, reading 8 (c) into 8 (b) (4) (A) does not render meaningless the language used in 8 (b) (4) (A), "to induce or encourage," since there are obviously many ways to induce and encourage behavior which are not protected by 8 (c), such as threats of physical violence or offers of monetary rewards. Hence, the language under consideration is unambiguous and susceptible of reasonable interpretation when read in connection with 8 (b) (4) (A). Accordingly, the undersigned finds it unnecessary to advert to the legislative history in order to determine legislative intent, and concludes and finds that Section 8 (b) (4) (A) must be read in

connection with and is limited by the protection afforded in Section 8 (c).[56]

Having determined that Patterson's picketing must be considered in the light of Section 8 (c), we now turn to the first of the General Counsel's major contentions that "Patterson's conduct at the job site"[57] on April 16 cannot be regarded as simply the expression of views, argument, or opinion. In this connection, the General Counsel contends, in essence, that Patterson's picketing was more than speech because Patterson resorted to it with regret only after speech had failed to persuade the carpenters to leave; because Patterson's threats to Giorgi and Abel were made with "the assurance that comes only from the knowledge 328

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[56] The undersigned has, of course, considered the legislative history and also several expositions concerning what it reveals. While it is true that illustrations of the types of activities 8 (c) was intended to protect (which were alluded to in the debates and in the committee reports) appear to be largely concerned with employer "speech," it must be remembered that experience under the Wagner Act along those lines had not covered unions because the Wagner Act had not extended unfair labor practices to unions. In any event, the undersigned knows of nothing definite in the legislative history which indicates that Section 8 (b) (4) (A) was intended to be read without reference to Section 8 (c). On the other hand, there are statements in the legislative history which indicate that Section 8 (c), as finally enacted, was intended to apply equally to unions and to employers. Thus, Senator Taft, Chairman of the Senate Committee, stated in debate on the floor of the Senate on April 25, 1947, in reference to a similar although somewhat differently worded provision in S. 1126, that that "provision regarding free speech applies both to employer and employee." The 8 (c) provision in S. 1126, which Taft then quoted, was as follows:

> The Board shall not base any finding of unfair labor practice upon any statement of views or arguments, either written or oral, if such statement contains under all the circumstances no threat, express or implied, of reprisal or force, or offer, express or implied, of benefit. (93 Cong. Rec. 4141.)

Equality of intended application is also shown by Senate Committee Report No. 105 on S. 1126, which opened its discussion of the above quoted Section 8 (c) as follows:

> Another amendment to this section would insure *both to employers and labor organizations* full freedom to express their views to employees on labor matters . . . (Emphasis supplied.)

[57] It should be noted that statements of Patterson to Giorgi by telephone on the evening of April 16, while clearly showing the IBEW's purpose was to force Giorgi to replace Langer with a union contractor by threatening to prevent Giorgi from securing "any skilled trades to finish the rest of the work" until he had done so, was not a part of the conduct at the job site here specifically in issue.

that the picketing entailed is a command and not an entreaty"; because that picketing was "a signal to get off the job or court trouble"; and because any picketing inherently "possesses elements of conpulsion" as an "industrial weapon" which stamps it as a "forcible technique" which cannot be regarded "solely as an appeal to the reason of workers or merely as a method for the dissemination of the facts of a labor dispute."

Clearly Patterson started picketing on April 16, after it seemed evident that Deltorto's two carpenters, who were aware the IBEW considered the job unfair, were going to remain on the job. It is true that Patterson commented that he "was sorry" as he walked away from Deltorto just before he started picketing. But it also should be noted that that remark was made just after Deltorto had given no indication of being willing to suspend work, although Patterson had just told him for the second time that the electrical contractor on the job was non-union. Assuming, however, that Patterson's remark indicating regret referred to his as then apparently unexpressed decision to start picketing rather than to Deltorto's failure to indicate any willingness to take action of the type Patterson evidently desired, such an expression of regret at having to publicize the issue cannot be said to establish that the method to be used in making the issue public was to be anything more than "speech" addressed to a larger audience. It is not uncommon for individuals and groups to be reluctant to have their "dirty linen" washed in public, and an expression such as Patterson used cannot be said to establish more than an indication of such reluctance, whatever he may have believed as to the probable effectiveness of so public an act as
329 picketing.

Again, it is clear that Patterson's threats to Giorgi and Abel, which are not here in issue, were couched in language

which indicated self-assurance as to results. However, display of assurance in making demands and in warning of impending consequences of failure to comply is not uncommon in relations between employers and unions and does not necessarily establish powers to carry out all threats which may be made. Thus, in the undersigned's opinion, whether Patterson knew that the picketing constituted "a command and not an entreaty" depends on the relationship actually existing between the two employees who left the job and the entity which engaged in the picketing. This is also partly true of General Counsel's further contention that the picketing was "a signal to get off the job or court trouble."[58] It thus becomes necessary to examine the relationship which existed between Ciancia and Bova, two members of Carpenters, and Patterson, the agent of IBEW who carried that organization's picket sign.

At the outset, it should be noted that IBEW's picket sign, in the undersigned's opinion, would constitute a "command" or a "signal," that is to say a verbal act exempt from Section 8 (c), only if something in the relationship between Carpenters and IBEW makes members of Carpenters subject to orders, commands, or signals from IBEW. There is nothing in the evidence which convinces the undersigned that this is so. The constitution of neither Carpenters nor IBEW is in evidence. However, the constitution of the Westchester Council, of which both Carpenters and IBEW are members, is in evidence. That constitution and by-laws constitutes the evidence of the way in which the "reciprocal obligations" and the "mutual benefits" as-

[58] To the extent that "trouble" relates to the possibility of *Carpenters disciplining its own members*, the matter is considered below in connection with the alleged *element of threat* in the picket sign.

sumed and exchanged by Carpenters, IBEW, and other labor organizations, are regulated and controlled.[59]

Careful study of Westchester's constitution and by-laws convinces the undersigned that it does not give the business agent of one affiliated organization authority over the members of any other affiliate. In fact, Section 41 contains the following language, clearly stating the contrary and limiting the authority even of the Westchester Council:

> Affiliated national or international organizations shall have autonomy over the conduct of their respective members. Subordinate councils must submit or prefer charges to the Department, and if said charges are proved to be well founded, the national or international organizations shall be required to discipline the member or members responsible for such action.
>
> No local council shall levy a fine upon an affiliated organization, but shall protest to the Executive Council of the Building and Construction Trades Department against any action by its affiliated locals that is detrimental to the welfare of the Building and Construction Trades Department.

It is equally significant that Westchester's constitution makes no provision that the members of one affiliated organization must respect a picket line established by another affiliate. In fact, the provisions governing strikes require that strikes "must be called by the council or executive board" and gives the "business agent of the council," when strikes are duly authorized, certain powers, including the authority to order "all employees on a struck job" to

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[59] In this discussion, the undersigned ignores the fact that the picketing took place in the area covered by the Greenwich Council, the constitution of which is not in evidence, and of which IBEW is and Carpenters is not a member. It would appear from Westchester's constitution, which is that of the Department, that the Greenwich Council's constitution would have been controlling, since the work was taking place in its area. In any event, it is apparent from the Department's "Constitution and By-Laws to Govern Local Councils" that the Greenwich Council's constitution would have to conform thereto, and hence would be essentially like that of the Westchester Council.

leave and to remain away until a settlement is reached or until "an official act of the local council" duly orders otherwise.[60]

It thus appears that, far from requiring the members of each affiliated organization to leave work upon picketing by any one of them, the Westchester Council's constitution provides for reciprocal obligations, with safeguards, only where official action is taken by the council or its executive board. There is no evidence in the record that the Westchester Council or the Greenwich Council took any action of any kind to initiate or to sanction Patterson's picketing.[61] Nor did the placard which Patterson carried indicate any authorization by either Westchester or Greenwich, or by any labor organization other than IBEW. Further, there is no indication that Patterson purported to act or that anyone had any reason to believe that Patterson, in fact, was acting for the Westchester or Greenwich Councils or for any organization other than IBEW. Thus, while Patterson was the representative of IBEW on the Westchester Council,[62] and was one of three trustees having supervision over funds and property of the Westchester Council, the constitution of that council and the record as a whole convinces the undersigned that Patterson's picketing cannot be considered an act of the Westchester Council

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[60] But even these provisions, vesting certain powers in the council, must be read in the light of the closing phraseology of Sec. 36 which provides that:

> . . . if any international officer of an affiliated organization issues any adverse or nullifying order thereto, he shall also jointly serve the local Building and Construction Trades Council with a duplicate copy thereof.

[61] For all the record shows, Patterson may have decided on the spur-of-the-moment on April 16 to display the picket sign. But even if he did so decide, and took action without consultation with any other official or member of IBEW, the action taken was chargeable to IBEW.

[62] The record does not show who was IBEW's representative on the Greenwich Council.

on any theory of agency here applicable.[63] It is thus evident that Patterson's picketing cannot be considered a joint enterprise of IBEW and Carpenters carried on through the Westchester Council, and there is not the slightest evidence that it was a joint enterprise by virtue of any other circumstances.[64] Accordingly, in view of all of the foregoing, the undersigned finds no warrant for denying the protection of Section 8 (c) to the picketing in the instant matter on the ground that it constituted a command or a signal.

331 As to the proposition advanced by the General Counsel that picketing, "whatever its speech aspect may be, is more than speech" because, in brief, it "possesses elements of compulsion," the undersigned does not believe that any such blanket characterization, even if accepted, would warrant excluding all picketing from the protection of Section 8 (c). Undoubtedly picketing is often a more effective form of "speech" than private conversation because it exposes the dispute to public attention and involves what has come to constitute for some people a *symbol*, calling for cohesion among those sharing or sympathizing with certain group interests.[65] But, generally speaking, focusing the spotlight of public attention upon alleged wrongs, even when verbal logic is reenforced with appeals to group loyalties embodied in religious or patriotic symbols strongly surcharged with emotion, does not necessarily exceed the bounds of permissible speech, simply because the total

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[63] The undersigned sees nothing, under the circumstances shown by this record, in Patterson's known official position in the Westchester Council which would require that council to disown Patterson's picketing, especially since it did not purport to emanate from that council.

[64] The record contains no evidence that any agent of Carpenters made any statement or took any action whatsoever relative to IBEW's picketing.

[65] The essential distinction between a *symbol* and a *signal* can be illustrated by reference to the flag which normally serves as a national symbol but which can be used also as a signal, for instance, if displayed to initiate action previously agreed upon, such as an attack upon a military objective.

effect thereof is strongly propulsive toward action on behalf of the desired end. Similarly where, as here, the picketing is not a signal to engage in an illegal act, is clearly within the allowable area of the dispute, and is entirely peaceful in its conduct,[66] it matters not that it may constitute, when considered in its total context, more than merely an appeal to reason, for words alone, stripped of the overtones of convictions, loyalties, ideals, and symbolism, form merely the skeleton of the concept of "freedom of speech," which is protected by the Constitution as interpreted in decisions of the Supreme Court.

From what has been said, it is evident that the picketing at bar constituted an expression of views, argument, or opinion in written and visual form, and was protected by Section 8 (c), *unless* that expression contained some threat of reprisal or force or promise of benefit. We therefore turn to the General Counsel's second major contention, that "such expression unquestionably contained a 'threat of reprisal' and a 'promise of benefit.' "

It is manifest that there was no threat of reprisal or promise of benefit overtly expressed in the wording on the placard which Patterson carried. The picket sign read, "This job is unfair to organized labor"; it carried also the identifying local number of IBEW. The General Counsel contends, however, that the picket sign, considered in its total context, contained both an implicit threat of reprisal and an implicit promise of benefit. The undersigned is satisfied, from his study of the Act's legislative history, that expressions need not, by their very terms, spell out threats or promises to exclude them from the protection of Section 8 (c). It is enough to show that, in fact, threats or promises are "implicitly and inextricably a part of the conduct in question," to adopt the General Counsel's

[66] That is, without violence, fraud, or libel.

phraseology. We turn, therefore, to a consideration of the factors in this case which the General Counsel relies upon to establish the implicit threat and the implicit promise.

Much of what has been said heretofore in discussing the General Counsel's first broad contention applies equally to the contention now being considered. It is true that IBEW and Carpenters are both affiliated with the Westchester Council and that the pleadings leave admitted the allegation that these organizations "have assumed reciprocal obligations and exchanged mutual benefits." But, as appears more fully above, there is nothing in the constitution of the Westchester Council, which the same admitted paragraph in the complaint alleges governs these "mutual and
332 reciprocal activities," which establishes any *direct*[67] responsibility, penalty, or benefit as between Carpenters and IBEW with respect to honoring one another's picket lines. Nor does the evidence warrant, in the undersigned's opinion, any inferences as to any possible practices of an indirect nature in such respects, based upon powers or procedures which might be indirectly exercised through the Westchester Council by way of the Department, under such constitutional provisions as those above quoted.[68] Patterson's official capacity in the IBEW and the Westchester Council has been considered above. It cannot be said that Patterson's office as trustee in the Westchester Council gave him any authority over members of Carpenters or made him an agent of the Council in actions such as the April 16 picketing.

[67] The undersigned, contrary to the General Counsel's position, does not believe that the Respondents' underlining of the word *"directly"* in a certain reference to the effect that no men were "ever *directly* ordered off the work" warrants the inference that the Respondents thereby tacitly admitted any indirect orders or hidden relationships, especially since Judge Symes' opinion in the Denver case, relied on so extensively by the Respondents, used substantially the same language.

[68] There is no testimony in the record as to how any of these provisions operate. Nor does the undersigned feel warranted in relying upon authorities cited in the General Counsel's brief as to "widely known" or "accepted" facts.

We consider now the General Counsel's more specific contention that a fair appraisal of the testimony and the demeanor of the witnesses requires the conclusion that the two carpenters "felt obliged, under the *possible* penalty of disciplinary measures [from their own union, Carpenters] to leave the job." (Emphasis supplied.) The undersigned believes this in large measure to be true.[69] However, upon careful consideration, the undersigned is convinced that the evidence in this record fails to establish the actual existence of any *contemporary requirement or practice* on the part of Carpenters inflicting disciplinary penalties upon its own members for failure to respect any picket line established by another organization affiliated with the Westchester Council.

In the undersigned's opinion, the crucial point is the actual existence of any such contemporary requirements or practices by Carpenters, not the fears which members may be shown to possess as to the *possible existence* of penalties.[70] The summary of the evidence now presented must be analyzed with this distinction in mind.

No constitution or by-laws of Carpenters is in evidence; there is no explanation for the failure to introduce one; and the record is devoid of any written evidence of such a requirement or practice as that in question on the part of Carpenters. There is, however, the testimony of the two carpenters who left the job, Ciancia and Bova, and of Deltorto, the carpenter subcontractor.

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[69] As to Patterson's assurance in making threats to Giorgi and Abel and his expression of regret before starting to picket, which matters are also advanced by the General Counsel in connection with this point, see the earlier discussion.

[70] Similarly, determinations as to violations of the Act by employers turn upon the behavior of employers rather than upon the fears of their employees as to possible penalties which might be inflicted. It should be noted, however, that there is a difference between establishing the *actual existence of a possible penalty*, in contrast to the *fear that such a possible penalty may exist.*

Ralph Ciancia, a member of Carpenters "on and off" for about 16 years, testified:

333 Well, previous to this Taft-Hartley Act, I knew that we were subject to fine if we were found working on a job with non-union men. What the union does now, I don't know. I always look for the least excuse, anyway, to get off the job, because I have plenty of work of my own to do at home.

Ciancia further testified that he had never been informed by Carpenters of any change in the above practice since the enactment of the Act, but that he knew from what he had read that there were "some changes made" but that he did not know what they were.

Angelo Bova, a member of Carpenters for about 20 years, testified on direct examination that he and Ciancia "took it upon" themselves to quit their work on the Greenwich house "right then and there" upon reading the placard Patterson was carrying, because they had "plenty of work to do anyway" and thought that it was "as good a time as any to take off" and also because, to quote Bova's testimony:

> Well, I think there is something in our constitution that says something about working with non-union men, that you are supposed to quit work, or something of that sort. I don't know what paragraph it is or where, but it is in that book. It is probably in that one that you have right there, if you will look it up. I don't know what number it is, but it is in there somewheres, that tells us just what's what concerning that.

Bova further testified, on direct examination, that he did not really know whether or not Carpenters' constitution contained any such provision. Upon examining an affidavit, which he admitted that he had previously signed and sworn to, Bova testified that the affidavit contained the statement that "being union members, we quit the job, because we were liable to a fine of some sort."

On cross-examination, Bova testified that no one had told hem to leave the job and that no one had made any threats. Ie was unable to find any such provision as he had testified bout in a copy of "Constitution and by-laws of the United Brotherhood of Carpenters and Joiners of America, in effect January 1, 1947" which was handed him by counsel for he Respondents, and which he examined while on the tand. Bova then testified further that he had been trying o tell the truth when he had signed the above-quoted affiavit and that said affidavit also contained the statement, I don't know if there is anything in our constitution or y-laws that says we can't work with non-union labor." 'rom Bova's testimony as a whole, the undersigned beves that when Bova left the job he had not known whether e would be subject to a fine if he had remained, but that he ad not wanted "to run the risk of being subject to a fine."

The testimony of Deltorto, the only other witness shown y the record ever to have been a members of Carpenters,[71] ontributes little, if anything, affirmatively toward esablishing any contemporary requirement or practice on ne part of Carpenters herein material. In answer to quesons seeking to elicit his understanding of the customs and ractices of Carpenters in any situation where its members ight continue to work on a job being picketed and declared nfair by another affiliated local, Deltorto testified that he ad "never worked on a job before where we had this rouble"; that he had never been "caught working or never orked on a job with non-union men"; that he could not defiinitely say" whether, if he had done so, he would have 334
een "bawled out or fined"; that he had "heard tell that rior to this Taft-Harley law" that a man who "insisted n working on a job that was unfair . . . would be subject

[71] Deltorto had held a card in Carpenters for perhaps 17 of his 23 or more ars in the construction business.

to a fine or lecture or bawling out, or something"; and that, although he had heard "talk of some one who was fined," he could not "truthfully say" that he "knew of anyone who was fined."

Everything considered, including the reluctance of the above-discussed three witnesses in giving their testimony, the undersigned believes and finds that, while the evidence in this record establishes a fear on the part of Ciancia and Bova of possible penalties or discipline, it fails to establish the actual present existence of any regulation, custom, or practice on the part of Carpenters which would warrant finding that IBEW's picket sign implicitly contained any specific type of threat of reprisal.[72]

There remains to be considered the General Counsel's broader contention, to the effect that a general threat and promise are both implicit in such an appeal as the IBEW picket sign made to Carpenters; that this flows "from the very nature of and reason for" their affiliation in the Westchester Council; that the implicit threat is that IBEW, in reprisal, would withhold assistance to Carpenters under like circumstances if Carpenters failed to honor IBEW's picket; and that the implicit promise of benefit is that if Carpenters honored IBEW's picket line it would benefit by reciprocal action on IBEW's part if and when the situation were reversed.

Assuming all of the foregoing to be true, since the picketing was not a joint enterprise, and since the evidence reveals no covenant between IBEW and Carpenters, either directly or through the Westchester Council, requiring each to respect the other's picket line, the implicit threat and promise is of the same general nature which it can be

[72] Even assuming that the evidence warranted the inference that, at some time in the past, some such regulation or practice actually existed, no question of remedial dissipation of any continuing influence thereof is involved, since Carpenters is not a respondent in this case.

argued is embodied in every appeal for assistance by any person or group sharing a common interest with any other person or group.

From his study of the Act, its legislative history, and Intermediate Reports and Decisions issuing thereunder, the undersigned is satisfied that the type of threats and promises referred to in Section 8 (c) are not of the general type implicit in such general appeals for assistance. Among other things, the statutory scheme of the Act is calculated to protect the right of employees to engage in, and to refrain from engaging in, concerted activities. The right to appeal to sympathetic individuals and groups for appropriate assistance in carrying into effect the rights guaranteed in Section 7 of the Act would seem to be an almost indispensable concomitant of those rights, and one not to be lightly negated because such appeals may merely imply that the granting or the withholding of assistance may beget similar behavior if the situation ever becomes reversed. Nor does it appear that any such remote, implied threats and promises partake of the nature of the threats and promises which it seems clear were intended to be excluded from the protection of Section 8 (c), such as, for instance, threats to close plants, to discharge individuals, to administer beatings, and promises to grant wage increases or promotions.

From all of the foregoing, the undersigned finds that Patterson's picketing as agent for IBEW at the Greenwich house on April 16, 1948, was an expression of views, argument, or opinion and the dissemination thereof in written and visual form, containing no threat of reprisal or force or promise of benefit, and that such picketing, by virtue of the protection of Section 8 (c), did not constitute an unfair labor practice. Accordingly, the undersigned will recommend dismissal of the complaint with respect thereto. 335

We turn now to the constitutional issues pertaining to freedom of speech, picketing, and Section 8 (b) (4) (A), which have been so ably briefed and which have been carefully considered by the undersigned in reaching his determinations on the issues herein. As to such general attack upon the constitutionality of the Act as appears involved, the undersigned, in the absence of applicable court decisions to the contrary, assumes the constitutionality of the Act, in accordance with Board policy.[73] And in view of the conclusions reached above with respect to Section 8 (c), it is unnecessary to determine whether constitutional guarantees as to freedom of speech would bar interpreting the Act (assuming the constitutionality of its provisions) so as to find the picketing in the instant case a violation.[74] In other words, whatever may be the limitations which constitutional guarantees impose upon interpreting Section 8 (b) (4) (A), the statute itself in Section 8 (c) imposes limitations upon Section 8 (b) (4) (A) which are dispositive of the issues here being considered.[75]

4. The Respondents' Proposed Findings and Conclusions

In accordance with the findings and conclusions reached hereinabove, and upon the record as a whole where no findings or conclusions applicable have heretofore been made, the undersigned hereby rules as follows with respect to the jointly filed proposed findings of fact and conclusions of law of the Respondents.

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[73] *Matter of Rite-Form Corset Company, Inc.*, 75 N.L.R.B. 174.

[74] Analogous problems involving this type of distinction have been dealt with for a number of years by the Board and the courts in considering employer speech.

[75] It should be noted that, even absent the protection of Section 8 (c), the picketing in the instant matter is of such an inherently different nature from the picketing in the Denver case that it would stand in a substantially different relation to constitutional protection from the picketing in that case.

Proposed findings numbered 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 34, 37, 38, 39, 40, and 50 are hereby accepted.

Proposed findings numbered 7, 8, 19, 20, 21, 29, 33, 35, 36, 41, 42, 43, 44, 45, 46, 47, 48, and 49 are hereby rejected.

Proposed conclusions of law numbered 2, 3, 6, 7, and 17 are hereby accepted.

Proposed conclusions of law numbered 1, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, and 16 are hereby rejected.

Conclusions of Law

1. Respondent International Brotherhood of Electrical Workers, Local 501, A. F. of L., is a labor organization within the meaning of Section 2.(5) of the Act. Respondent William Patterson is an agent of the aforesaid labor organization.

2. Samuel Langer is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act. 336

3. The Respondents, International Brotherhood of Electrical Workers, Local 501, A. F. of L., and William Patterson, its agent, have not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (4) (A) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is RECOMMENDED that the Board ORDER that the complaint be dismissed in its entirety.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said

Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this day of December, 1948.

EARL S. BELLMAN, *Trial Examiner*

ORDER TRANSFERRING CASE TO BOARD

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40.

ORDER TRANSFERRING CASE TO THE NATIONAL LABOR RELATIONS BOARD

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

IT IS HEREBY ORDERED, pursuant to Section 203.45 of National Labor Relations Board Rules and Regulations, Series 5, that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., December 31, 1948.

By the direction of the Board:

LOUIS R. BECKER,
Acting Executive Secretary.

NOTE.—Communications concerning compliance with the Intermediate Report should be with the Director of the Regional Office issuing the complaint.

Your attention is specifically directed to the concluding paragraph of the Intermediate Report in respect to your right to file exceptions, briefs, and to request oral argument. Please note that exceptions and brief must be filed as separate documents.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40

REQUEST FOR ORAL ARGUMENT

Permission is requested by the undersigned for leave to argue orally before the National Labor Relations Board in the above-entitled and numbered cause, in accordance with Section 203.46, Rules and Regulations of the National Labor Relations Board, as amended.

Respectfully submitted,

LOUIS SHERMAN,
General Counsel, I. B. E. W.

January 10, 1949

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GENERAL COUNSEL'S EXCEPTIONS TO INTERMEDIATE REPORT UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40.

STATEMENT OF EXCEPTIONS

Pursuant to Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, as amended August 18, 1948, counsel for the General Counsel of the National Labor Relations Board, hereby submits a Statement of Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner dated December 31, 1948.

The Exceptions are directed to that portion of the Trial Examiner's findings of fact and conclusions of law which relates to the alleged unfair labor practices within the meaning of Section 8 (b) (4) (A), of the National Labor Relations Act, as amended June 23, 1947, and exception is also taken to the recommendation made upon the basis of the said findings of fact and conclusions of law that the Board order that the complaint be dismissed. The Exceptions are set forth in more detail as follows:

1. The Trial Examiner erred in finding and concluding that the picketing engaged in by the respondents constituted the expressing of views, argument, or opinion, or the dissemination thereof, within the meaning of Section 8 (c) of the Act.

2. The Trial Examiner erred in finding and concluding that the picketing engaged in by the respondents constituted the expressing of views, argument, or opinion, or the dissemination thereof, which did not contain a threat of reprisal or promise of benefit within the meaning of Section 8 (c) of the Act.

3. The Trial Examiner erred in that he failed to conclude from the following findings of fact, made by him:

(a) the respondents' action "had as its purpose an alleged objective," "clearly within the ambit of Section 8(b)(4)(A)." p. 13 footnote 18 and p. 16 of Report.

(b) the respondent union and the Carpenters Local to which the striking carpenters belonged were both members of the same labor organization, namely, the Building and Construction Trades Council of Westchester County and had assumed reciprocal obligations and exchanged mutual benefits in the pursuit of their respective union activities.

(c) the striking carpenters had "felt obliged, under the possible penalty of disciplinary measures from their own union (Carpenters) to leave the job." p. 22 of Report.

(d) the carpenters had been acquainted with the facts of the dispute prior to the picketing and, notwithstanding, had not left the job.

(e) the picketing engaged in on the job site "was the effective stimulus, in producing their (the carpenters') action in leaving work that day." p. 13 of Report.

that if the conduct of the respondents constituted the expressing of views, argument, or opinion, or the dissemination thereof, it nonetheless contained a promise of benefit and a threat of reprisal within the meaning of Section 8 (c) of the Act.

4. The Trial Examiner erred in concluding that the respondents, International Brotherhood of Electrical Workers, Local 501, A. F. of L. and William Patterson, its agent, have not engaged in unfair labor practices within the meaning of Section 8(b)(4)(A) of the Act.

341 5. The Trial Examiner erred in recommending that the complaint be dismissed in its entirety.

WHEREFORE the Board is respectfully requested to set aside such of the Trial Examiner's findings of fact, conclusions of law, and recommendation, to which Exceptions have been taken as aforesaid. It is further requested that the Board find and conclude that the respondents have violated Section 8(b)(4)(A) of the Act and issue a proper order so as to effectuate the policies of the Act.

Respectfully submitted,

/s/ JAMES V. ALTIERI
Attorney
Counsel to General Counsel
National Labor Relations Board
Second Region

To: National Labor Relations Board
Washington 25, D. C.
SYDNEY A. SYME, Esq.
201 Main Street
White Plains, N. Y.
Attorney for Respondents
MR. SAMUEL LANGER
108 Purdy Avenue
Port Chester, New York
Dated: January 10, 1949.

January 17, 1949.

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Mr. Frank M. Kleiler
Executive Secretary
National Labor Relations Board
815 Connecticut Avenue, N. W.
Washington, D. C.

Attention: Louis Becker

Dear Sir:

Extension to February 1, 1949 requested for filing exceptions to trial examiner's report in Matter of IBEW Local 501 and Wm. Langer, Case No. 2-CC-40. Extra time required as necessary to consult with out of town counsel representing local.

Very truly yours,

LOUIS SHERMAN,
General Counsel, IBEW

LS/ema—9

PETITIONS EXCEPTIONS TO INTERMEDIATE REPORT BEFORE THE NATIONAL LABOR RELATIONS BOARD WASHINGTON, D.C. 347

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40.

STATEMENT OF EXCEPTIONS OF RESPONDENTS IBEW LOCAL 501 and WILLIAM PATTERSON

Respondents support the conclusion of the Trial Examiner that the International Brotherhood of Electrical Workers, Local 501, A. F. of L. and William Patterson, its agent, have not engaged in unfair labor practices within the meaning of section 8 (b) (1) (A) and 8 (b) (4) (A) of the Act.

Respondents except, however, to the conclusion of the Trial Examiner that Samuel Langer is engaged in commerce within the meaning of section 2 (6) and (7) of the Act and to all adverse findings of fact and conclusions in the Trial Examiner's Intermediate Report and his failure to make findings and conclusions required by the law and the facts. In particular, respondents except to the following:

1. The finding that "numerous strands in the web of commerce, several of which crossed State lines, were interlaced in the construction of the Greenwich house."

2. The failure to sustain the objection of counsel for respondent to the admission of General Counsel's Exhibit No. 2—(a compilation of general statistics on the building and construction industry in the United States from 1939 to 1948)—on the grounds that the contents thereof were irrelevant and immaterial and were unrelated to the particular issues in this litigation.

348 3. The failure of the trial examiner to find that the services which Langer renders to firms not involved in this proceeding which manufacture goods for interstate commerce, Brassner, Curvlite and Bantam, should be disregarded and the Trial Examiner's failure to sustain the objections of counsel for respondents to the admission of testimony of witnesses for such firms on the ground of irrelevancy.

4. The finding that "construction was embedded in a network of commercial relationships involving Langer, Giorgi and Deltorto and their respective suppliers" and that the ramifications of such relations "manifestly affect commerce."

5. The failure to find that the allegations in the complaint—with respect to the question of commerce—had not been proved by a preponderance of the testimony.

6. The assumption that the application of the Taft-Hartley Act recommended in the report is constitutional.

The specific exceptions above enumerated are not intended to limit the generality of the second paragraph nor are they intended to limit additional specific objections enumerated in the attached brief.

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, and SAMUEL LANGER	Case No. 2-CC-40.

DECISION AND ORDER

On December 31, 1948, Trial Examiner Earl S. Bellman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto.[1] Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report; and the Respondents filed a brief in support of its exceptions.[2]

The Respondents' request for oral argument is hereby denied, as the record, including the exceptions and briefs, in our opinion adequately present the issues and the positions of the parties.

[1] More specifically, the Trial Examiner concluded that the Board had jurisdiction in this proceeding, but found that the Respondents' conduct did not violate the Act as alleged in the complaint.

[2] No exception has been taken to the Trial Examiner's findings (1) that the Respondents did not violate Section 8 (b) (4) (A) of the Act by threatening to induce or encourage employees of employers other than Nicholas Deltorto or Giorgi Construction Company to strike or refuse to perform services in order to force said other employers to cease doing business with Samuel Langer and (2) that the Respondents did not violate Section 8 (b) (1) (A) in any respect. Accordingly, we adopt the Trial Examiner's recommendations that the complaint be dismissed in these respects.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as they are inconsistent with the additions, exceptions, and modifications hereinafter set forth.

350 1. The Respondents contend that the Board does not have jurisdiction over this labor dispute because their conduct in this case could not affect the flow of materials in such a way as to have an actual effect upon interstate commerce and that, in any event, if the Board has jurisdiction, its exercise here would not effectuate the policies of the Act. Members Reynolds and Gray agree with the Trial Examiner, as stated in the Intermediate Report, that the Board has plenary power to act in this case, and they would exercise it here for the reasons stated in the majority opinion in the *Watson* case.[3] Chairman Herzog joins in this disposition of the case on its facts. He would exercise jurisdiction here because the very controversy before the Board arose out of an interstate transaction, in which New York contractors were engaged in the construction of a residence in the State of Connecticut.[4]

2. In recommending dismissal of the allegation that the Respondents violated Section 8 (b) (4) (A), the Trial

[3] *Matter of Local 74, United Brotherhood of Carpenters, et al.*, and *Ira A. Watson Co.*, 80 N. L. R. B. No. 91 (Decided November 3, 1948).

[4] In this case *Chairman Herzog* does not rely, and in future cases can no longer rely, upon the rationale of his *Watson* concurring opinion, in which he held—upon a review of the legislative history—that the Board had no discretion to decline to exercise jurisdiction in secondary boycott cases. That view having recently been rejected by all his colleagues in the *Walter J. Mentzer* case (82 NLRB No. 39), the Chairman deems himself bound by the majority holding that the Board is free to exercise its discretion to take or not to take jurisdiction in all cases and that secondary boycotts should be no exception to that rule.

Examiner held that the picketing here involved was protected as an expression of free speech not containing any promise of benefit or threat of reprisal. In reaching this conclusion, he relied on the view that Section 8 (c), the free-speech provision, must be regarded as limiting the union activities otherwise banned by Section 8 (b) (4) (A). We have recently held, however, that Section 8 (b) (4) (A) prohibits peaceful picketing, as well as other means of inducement or encouragement, in furtherance of an objective proscribed therein, and that Section 8 (c) does not immunize such conduct.[5] The record shows, and we find, that the Respondents, by picketing, on or about April 16, 1948, a construction site at Greenwich, Connecticut, as more fully described in the Intermediate Report, induced or encouraged employees of Nicholas Deltorto, a subcontractor of Giorgi Construction Co., to engage in a strike or a concerted refusal in the course of their employment to perform services for Deltorto, with an object of forcing or requiring Giorgi Construction Co., the general contractor, to cease doing business with Samuel Langer, another subcontractor on the same construction job.[6] We find that by such conduct the Respondents violated Section 8 (b) (4) (A) of the Act.

ORDER

Upon the basis of the entire record in this proceeding and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, International Brotherhood of Electrical Workers, Local 501, A. F. of L.,

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[5] *Matter of Wadsworth Bldg. Co.* and *Klassen & Hodgson, Inc.*, 81 N. L. R. B., No. 127.

[6] At the time when the picketing commenced, the employees of Deltorto, the sub-contractor, were the only ones actually at work on the construction job.

and William Patterson, the business representative of Local 501, and their agents, shall:

351 1. Cease and desist from inducing or encouraging the employees of Nicholas Deltorto or any employer, by picketing or related conduct, to engage in a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Giorgi Construction Co., or any other employer or person to cease doing business with Samuel Langer.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places at the business office of Local 501, in the city of Mount Vernon, New York, copies of the notice attached hereto as Appendix A.[7] Copies of the notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by a representative of Local 501 and by William Patterson as business representative of said Local, be posted immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said posted notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is dismissed, insofar as it alleges (1) that

[7] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A DECISION AND ORDER," the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING".

the Respondent violated Section 8 (b) (4) (A) by threatening to induce or encourage employees of employers other than Nicholas Deltorto or Giorgi Construction Company to strike or refuse to perform services in order to force said other employers to cease doing business with Samuel Langer and (2) that the Respondents violated Section 8 (b) (1) (A) of the Act.

Signed at Washington, D. C., this 12th day of April 1949.

PAUL M. HERZOG
Chairman

JAMES J. REYNOLDS, JR.
Member

J. COPELAND GRAY
Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

JOHN M. HOUSTON and ABE MURDOCK, MEMBERS, 352
dissenting:

We believe the operations involved in this case constitute an essentially local enterprise with only the most remote effect upon commerce. Consequently, we do not desire to exercise our discretion to assert jurisdiction. Mr. Murdock desires to note that if he were called on to pass upon a set of facts identical to those in the *Watson* case, he would now join in the views expressed by Mr. Houston in that case.

Signed at Washington, D. C., this 12th day of April 1949.

JOHN M. HOUSTON
Member

ABE MURDOCK
Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE

353 TO ALL MEMBERS OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L.

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

WE WILL NOT induce or encourage employees of Nicholas Deltorto or any other employer, by picketing or related conduct, to engage in any strike or concerted refusal to perform services in the course of their employment with the object of forcing or requiring Giorgi Construction Co., or any other person to cease doing business with Samuel Langer.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L.

By .....

.....

Business Representative, International Brotherhood of Electrical Workers, Local 501, A. F. of L.

Dated .....

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, *Petitioners,*	PETITION.
v.	
NATIONAL LABOR RELATIONS BOARD, *Respondent.*	

PETITION OF LOCAL UNION NO. 501 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM PATTERSON TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit.

Local Union No. 501 of the International Brotherhood of Electrical Workers, and William Patterson, hereinafter referred to as "petitioners," respectfully show:

1. That the petitioner, Local Union No. 501, is an unincorporated Labor Union, consisting of more than seven members, having its principal office and place of business at Number 9 Prospect Avenue, West, in the City of Mount Vernon, County of Westchester and State of New York, within the jurisdiction of the United States Court of Appeals for the Second Circuit.

2. That the petitioner, William Patterson, is one of the Agents or Business Representatives of said Local Union

No. 501, and resides at No. 58 Smith Avenue, in the City of White Plains, County of Westchester and State of New York, within the jurisdiction of the United States Court of Appeals for the Second Circuit.

3. That at all the times hereinafter mentioned, Local Union No. 501 has been and still is a labor organization engaged in promoting and protecting the interests of its members, and William Patterson has been one of the Agents or Business Representatives of Local Union No. 501 and engaged in promoting and protecting the interests of the members of said Local Union No. 501.

4. That as more fully appears herein from the order of the National Labor Relations Board, (hereinafter called the "Board") dated the 14th day of April, 1949, and annexed hereto, and made a part hereof as Exhibit A., the alleged unfair labor practices with which your petitioners are charged were claimed and determined to have been committed in the Town of Greenwich, County of Fairfield and State of Connecticut, within the jurisdiction of the United States Court of Appeals for the Second Circuit.

357 5. That by reason of the matters alleged in paragraphs 1, 2, 3, and 4, herein, and by virtue of the provisions of Section 10, subdivision (f) of the Labor Management Relations Act of 1947, (hereinafter called "the Act"), this Court has jurisdiction of the parties and the subject matter of this petition.

6. That on June 6th, 1948, one Samuel Langer, residing in the Village of Port Chester, County of Westchester and State of New York, filed with the Regional Director of the Board for the Second Region in New York, New York, an amended charge which alleged that your petitioners at the Town of Greenwich, County of Fairfield and State of Con-

necticut, had been and were engaging in unfair labor practices, within the meaning of the Act.

7. Thereafter, the Board by its acting Regional Director for the Second Region issued and caused to be served upon petitioners its complaint, dated June 24th, 1948, which alleged in substance that your petitioners had engaged in acts, and continued to engage in acts constituting unfair labor practices affecting commerce within the meaning of Section 8 (b) subsections (1) (A) and (4) (A) and section 2 subdivisions 6 and 7 of the Act.

8. On or about July 12th, 1948, petitioners did duly make and file their answer wherein they denied that they had been or were engaged in unfair labor practices, and further pleaded separate defenses as follows:

1. That the charges set forth in the complaint relate exclusively to the erection of a single residence building located in the Town of Greenwich in the State of Connecticut. 358

2. That any labor dispute in relation to this construction job, involved a job being conducted solely within the confines of the State of Connecticut.

3. That said construction job was in no manner involved in Interstate Commerce but was exclusively an intrastate matter.

4. That by reason thereof the provisions of the Labor Management Relations Act of 1947 have no application to this controversy.

5. That the National Labor Relations Board only has jurisdiction over the controversies in which Interstate Commerce is involved.

6. That the National Labor Relations Board has no jurisdiction in the instant matter.

7. That the complaint fails to state a charge against the respondents upon which relief can be here granted.

8. That the Board lacks jurisdiction over the subject matter of the complaint.

9. That the provisions of the Labor Management Relations Act of 1947, which the complaint seeks to enforce, are in violation of the provisions of the Constitution and Bill of Rights of the United States, and are likewise in violation of the Constitution and Bill of Rights of the State of New York, in that it tends to deprive the respondents of the right of freedom of speech.

9. Petitioners also contended —

"That anything said or done by petitioners in connection with the alleged unfair labor practice came within the express provision of Section 8, subdivision 6, paragraph C of the Labor Management Relations Act of 1947, which so far as here pertinent reads as follows:

359 "(C) The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice, under any of the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit."

10. Petitioners further contended that—

"Because of the small gross annual business conducted by Samuel Langer the Board should decline jurisdiction."

11. On August 4th, 5th and 6th, 1948, hearings were held at Port Chester, New York, before Earl S. Bellman, Esq., the Trial Examiner designated by the Board.

The Board, your Petitioners and Samuel Langer, the original complainant against petitioners were present and represented.

12. At the opening of the case, and at the close of the Board's case, and at the close of the entire case, counsel for petitioners moved to dismiss the complaint. The Trial Examiner reserved decision thereon. Petitioners filed proposed Findings and Conclusions which the Examiner passed upon.

13. On December 31st, 1948, the Trial Examiner issued his Intermediate Report, which was filed with the Board, which, in substance, held that petitioners had not engaged in, and were not engaging in unfair labor practices within the provisions of the Act, and that the alleged picketing by virtue of the protections of Section 8(c), did not constitute an unfair labor practice. And further recommended that the complaint be dismissed. 360

14. Your petitioners filed exceptions to certain portions of the Intermediate Report in certain instances wherein the Trial Examiner had refused to find certain requests presented by petitioners. The Board also filed exceptions to the Intermediate Report but did not serve any requests to find.

15. On December 31st, 1948, the Board made an order directing that the case be transferred to and continued before the Board itself.

16. Petitioners thereupon requested in writing that oral argument be heard before the Board, but the Board refused to hear oral argument.

17. On April 12th, 1949, the Board, by a divided vote of three to two, rendered its decision and order reversing the material findings, conclusions and recommendations of the Trial Examiner, and holding that petitioners were guilty of unfair labor practices in violation of the Act.

18. A copy of such decision and order of the Board which is here sought to be reviewed and set aside is annexed hereto and made a part hereof as Exhibit A.

19. Your petitioners deeming themselves aggrieved and believing said decision and order to be prejudicial to them, unwarranted and not sustained in law, and on the facts established, hereby petition for a review of said Decision and Order of the Board by the United States Court of Appeals for the Second Circuit, and assign as their rea-
361 sons therefor that the Board in and by its said Decision and Order erred in the following respects:—

1. In its reversal of the Trial Examiner's Decision and Order recommending that petitioners' motion to dismiss the complaint at the conclusion of the whole case be granted.

2. In its findings, conclusions and order "that the conduct of petitioners herein constituted unfair labor practices in violation of the Act."
In particular, but not limiting the generality of the above assignment of error, the Board erred in finding that "Respondents, by picketing, on or

about April 16th, 1948, a construction site at Greenwich, Connecticut, as more fully described in the Intermediate Report, induced or encouraged employees of Nicholas Deltorto, a subcontractor of Giorgi Construction Co., to engage in a strike or a concerted refusal in the course of their employment to perform services for Deltorto, with an object of forcing or requiring Giorgi Construction Co., the general contractor, to cease doing business with Samuel Langer, another subcontractor on the same construction job, within the meaning of Section 8 (b) (4) (A) of the Act.

3. In its findings, conclusions and order that the picketing here involved was not protected as an expression of free speech not containing any promise of benefit or threat of reprisal, pursuant to Section 8(c) of the Act.

4. That both the Trial Examiner and the Board erred in holding and deciding that the Board has jurisdiction in the matter because the conduct of petitioners did affect the flow of materials in such 362
a way as to have an actual effect upon interstate commerce.

5. In its finding, conclusion and order deciding and holding that the Board had jurisdiction in this matter pursuant to the doctrine of interstate commerce.

6. That the Board erred in refusing "to decline jurisdiction in this matter."

7. That by reason of the small gross annual business conducted by the complainant, Samuel Langer,

the Board erred in refusing to decline jurisdiction in this matter.

8. That the Board erred in ordering that petitioners "Cease and desist from inducing or encouraging the employees of Nicholas Deltorto or any (sic) employer, by picketing or related conduct, to engage in a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Giorgi Construction Co., or any other employer or person to cease doing business with Samuel Langer."

In particular, but not limiting the generality of the above assignment of error, the Board erred in its issuance of a blanket form of Order which is not consistent with the provisions of the Act, and which is not supported by requisite findings and a preponderance of the testimony.

9. That the Board erred in ordering that petitioners "Post in conspicuous places at the business office of Local 501 in the City of Mount Vernon, N. Y., copies of the notice attached hereto as Appendix A.," and maintain said notice "for a period of sixty days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said posted notices are not altered, defaced, or covered by any other material," and notify the Regional Director for the Second Region within ten days from the date of such order, what steps petitioners have taken to comply with said Order.

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10. That the Trial Examiner and the Board erred in failing to sustain petitioners' objection to the admission of General Counsel's Exhibit No. 2 (a compilation of general statistics on the building and construction industry in the United States from 1939 to 1948), and in the consideration thereof in determining the issues herein, on the ground that the contents thereof were irrelevant and immaterial, and were unrelated to the issues in this litigation.

11. The Trial Examiner and the Board erred in finding that "construction was embedded in a network of commercial relationships involving Langer, Giorgi and Deltorto and their respective suppliers" and that the ramification of such relations "manifestly affect commerce."

12. That the Board erred in failing to find that the allegations in the complaint, including the allegations with respect to the questions of commerce and the purported violation of Section 8 (b) (4) (A) of the Act, had not been proved by a preponderance of the testimony under the requirements established by the Labor Management Relations Act of 1947. 364

13. That the Board erred in assuming that the application of the Taft-Hartley Act recommended in the Intermediate Report of the Trial Examiner is constitutional.

14. That the Trial Examiner and the Board erred in the conclusion that Samuel Langer was engaged in commerce within the meaning of the Act.

20. No previous application has been made for the relief herein sought.

WHEREFORE, your petitioners pray:—

1. That a copy of this petition be forthwith filed with the Clerk of this Court to the end that the Board may be required in conformity with the statute to certify to this Court a transcript of the entire record in this proceeding, wherein the aforesaid Order and Decision of this Board, dated April 12th, 1949, was entered.

2. That this Court review the entire Record in this proceeding, including the aforesaid Order and Decision of the Board, and its decision, findings of fact and conclusions made therein, and set aside and vacate said decision, findings and conclusions insofar as your petitioners have hereinbefore indicated, and set aside and vacate said Order and Decisions, and direct said Board to dismiss the complaint heretofore issued against your petitioners.

3. And for such other, further and different relief as to this Court may seem just and proper.

365 Dated, White Plains, New York, May 16, 1949.

LOCAL UNION NO. 501, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A. F. of L.

By WILLIAM R. PARSLOW
President

WILLIAM PATTERSON
Petitioners

SYDNEY A. SYME,
Attorney for Petitioners,
No. 201 Main Street,
White Plains, New York.

LOUIS SHERMAN
PHILIP R. COLLINS,
Attorneys for International Brotherhood of Electrical Workers, A. F. of L.
1200 Fifteenth Street, N. W.
Washington 5, D. C.

STATE OF NEW YORK,
COUNTY OF WESTCHESTER, SS:

WILLIAM R. PASLOW being duly sworn, deposes and says that he is the President of Local Union 501 of the International Brotherhood of Electrical Workers, A. F. of L., one of the petitioners in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. 366

Sworn to before me this 16th day of May, 1949.

WILLIAM R. PARSLOW

ELIZABETH JACOB

Notary Public in the State of New York
Appointed for Westchester County
Commission expires March 30, 1951

STATE OF NEW YORK,
COUNTY OF WESTCHESTER, SS:

WILLIAM PATTERSON, being duly sworn, deposes and says that he is one of the petitioners in the foregoing petition; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein

stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Sworn to before me this 16th day of May, 1949.

WILLIAM PATTERSON

ELIZABETH JACOB

Notary Public in the State of New York
Appointed for Westchester County
Commission expires March 30, 1951

IN THE UNITED STATES COURT OF APPEALS 367
FOR THE SECOND CIRCUIT

No.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, Petitioners

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

ANSWER OF NATIONAL LABOR RELATIONS BOARD TO PETITION TO REVIEW AND SET ASIDE ITS ORDER, AND REQUEST FOR ENFORCEMENT THEREOF

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board herein called the Board and pursuant to the National Labor Relations Act, as amended, (61 Stat. 136, 29 U.S.C. Supp. I Sections 151 *et seq*), hereinafter called the Act, and files this answer to the petition to review and set aside an order issued by the Board against the International Brotherhood of Electrical Workers, Local 501, A. F. of L. and William Patterson, petitioners herein, and the Board's request for enforcement of said order.

1. The Board admits the allegations of paragraphs 1, 2, 3, and 4 of said petition.

2. Answering the allegations contained in paragraphs 6 to 18 inclusive of said petition, the Board prays that reference be made to the certified transcript of the record filed herewith of the proceedings heretofore had herein for a full and exact statement of the pleadings, evidence, findings of fact, and conclusions of law and order of the Board, and all other proceedings in this matter.

368 3. The Board denies each and every allegation of error contained in Paragraph 19 of said petition.

4. Further answering said petition, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

5. Further answering, the Board, pursuant to Section 10 (e) of the Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioners on April 12, 1949, in proceedings designated on the records of the Board as Case No. 19-CA-95 entitled "*In the Matter of International Brotherhood of Electrical Workers, Local 501, A. F. of L. and William Patterson and Samuel Langer.*"

In support of this request for enforcement of its order, the Board respectfully shows:

(a) International Brotherhood of Electrical Workers, Local 501, A. F. of L. is a labor organization as defined in the Act and William Patterson is one of its agents. This Court has jurisdiction of the Petition to Review and this request for enforcement by virtue of Section 10 (e) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is

hereby made, and including the complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Trial Examiner's report and exceptions thereto, the Board on April 12, 1949, duly stated its findings of fact and conclusions of law and issued its order directed to petitioners International Brotherhood of Electrical Workers, Local 501, A. F. of L. and William Patterson, the business agent of Local 501 and their agents. The aforesaid order provides as follows:

> Upon the basis of the entire record in this proceeding and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, International Brotherhood of Electrical Workers, Local 501, A. F. of L., and William Patterson, the business representative of Local 501, and their agents, shall: 369
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> 1. Cease and desist from inducing or encouraging the employees of Nicholas Deltorto or any employer, picketing or related conduct, to engage in a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Giorgi Construction Co. or any other employer or person to cease doing business with Samuel Langer.
>
> 2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.
>
> (a) Post in conspicuous places at the business office of Local 501, in the city of Mount Vernon, New York, copies of the notice attached hereto as Appendix A. Copies of the notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by a representative of Local 501 and by William Patterson as business representative of said Local, be

posted immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said posted notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Second Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

(c) The Board's decision and order has heretofore been duly served upon the Petitioners.

(d) Pursuant to Section 10 (e) and (f) of the Act the Board has certified and filed with this Court a transcript
370 of the entire record in the proceeding.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and of the filing of the certified transcript of the entire record in this proceeding, to be served upon petitioners, and that this Court take jurisdiction of the proceeding and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon the order hereinabove set forth, a decree denying the petition to review and set aside and enforcing in whole said order of the Board and requiring petitioners International Brotherhood of Electrical Workers, Local 501, A. F. of L. and William Patterson and their agents to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforesaid notice to be posted by petitioners marked "Appendix A" shall specifically recite that the Board's

order has been enforced by a decree of this Court as follows:

> "Appendix A. Notice To All Members of International Brotherhood of Electrical Workers, Local 501, A. F. of L., Pursuant to a Decree of the United States Court of Appeals Enforcing A Decision and Order of the National Labor Relations Act, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:"

Dated at Washington, D. C.
this 24th day of June 1949.

/s/ A. NORMAN SOMERS
Assistant General Counsel
National Labor Relations Board.

APPENDIX A

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NOTICE

TO ALL MEMBERS OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L.

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

WE WILL NOT induce or encourage employees of Nicholas Deltorto or any other employer, by picketing or related conduct, to engage in any strike or concerted refusal to perform services in the course of their employment with the object of forcing or requiring Giorgi Construction Co. or any other person to cease doing business with Samuel Langer.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L.

By .....

.....

Business Representative, International Brotherhood of Electrical Workers Local 501, A. F. of L.

Dated.....

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia, ss: 372

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, respondent and petitioner herein and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS
Assistant General Counsel

Subscribed and sworn to before me
this 24th day of June 1949.

(SEAL)
ROSE MARY FILIPOWICZ
Notary Public, District of Columbia
My Commission expires March 15, 1953

IN THE UNITED STATES COURT OF APPEALS
373 FOR THE SECOND CIRCUIT
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. of L., and WILLIAM PATTERSON, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board—Series 5, as amended (redesignated Section 102.87, 14 F. R. 78), hereby certifies that the documents annexed hereto constitute a full and accurate transcription of the entire record of a proceeding had before said Board, entitled, "In the Matter of International Brotherhood of Electrical Workers, Local 501, A. F. of L., and William Patterson and Samuel Langer," the same being Case No. 2-CC-40 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated said documents attached hereto are as follows:

(1) Copy of order designating Earl S. Bellman Trial Examiner for the National Labor Relations Board, dated August 4, 1948.

(2) Stenographic transcript of testimony held before Trial Examiner Bellman on August 4, 5, and 6, 1948, together with all exhibits introduced in evidence.

(3) Copy of Petitioners' proposed findings of fact and conclusions of law.

(4) Copy of Chief Trial Examiner's telegram to all parties, dated August 30, 1948, granting extension of time to file briefs with the Trial Examiner, pursuant to request of counsel for General Counsel.

(5) Copy of Trial Examiner Bellman's Intermediate Report, dated December 31, 1948 (annexed to item 13 hereof); copy of order transferring case to the Board dated December 31, 1948, together with copy of affidavit of service thereof. 374

(6) Copy of Petitioners' request for oral argument before the Board, dated January 10, 1949. (Denied in Board's Decision and Order of April 12, 1949, page 1.)

(7) Copy of exceptions to the Intermediate Report, filed by counsel for the General Counsel.

(8) Copy of Petitioners' letter, dated January 17, 1949, requesting extension of time for filing exceptions to the Intermediate Report.

(9) Copy of telegram, dated January 18, 1949, granting all parties extension of time for filing exceptions to the Intermediate Report.

(10) Copy of Petitioners' telegram, dated January 27, 1949, requesting further extension of time for filing exceptions and brief.

(11) Copy of telegram, dated January 28, 1949, granting all parties further extension of time for filing exceptions and briefs.

(12) Copy of Petitioners' exceptions to the Intermediate Report.

(13) Copy of Decision and Order, issued by the National Labor Relations Board on April 12, 1949, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 7th day of June 1949.

/s/ FRANK M. KLEILER
Executive Secretary
National Labor Relations Board

(SEAL)

[fol. 323] UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1949

No. 102

(Argued January 4, 1950. Decided February 24, 1950)

Docket No. 21365

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, et al., Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

Before L. Hand, Swan and Clark, Circuit Judges

On petition by a labor union to review an order of the National Labor Relations Board, directing it to cease and desist from inducing and encouraging a secondary boycott.

Sydney A. Syme for the petitioner.
Louis Sherman for International Brotherhood of Electrical Workers (A. F. L.), amicus curiae.
James V. Altieri for the respondent.

[fol. 324] L. HAND, Circuit Judge:

A local union of the International Brotherhood of Electrical Workers (A. F. L.) has appealed—filed a petition for review—from an order of the Labor Board, enjoining it from carrying on what the Board has held to be a secondary boycott; the Board has answered and asks for an "enforcing order." The appeal presents two questions: (1) whether the occurrences "affected" interstate commerce within the meaning of the Labor Relations Act, 1947;* (2) whether the evidence before the Board supported its finding that the "local" had engaged in conduct which constituted a secondary boycott, forbidden by the Act. The facts as the Board found them are amply supported by evidence; and in outline they are as follows. A contractor, named Giorgi, who had agreed to build a house for the owner of a lot in Greenwich, Connecticut,

* §§ 141 *et seq.*, Title 29, U. S. C.

let out the carpentry to a contractor, named Deltorto, and the electrical work to another contractor, named Langer. Giorgi and Langer had their business in Port Chester, New York; Giorgi himself did the masonry work, and bought the materials which he used from a Port Chester dealer who delivered them to the job at Greenwich; Deltorto bought his lumber from a Connecticut dealer, who imported it from New York; Langer had already finished the "roughing" of the electrical work, but still had some work to do on the job. On the days here involved Deltorto had two carpenters on the job, members of an A. F. L. union; but Langer, who was a non-union employer, had none. Patterson—one of the respondents to the Board's complaint—was the business representative of the "local"—the other respondent—; and a few days before April 16, 1948, he [fol. 325] had learned that the electrical work on the house was being done by non-union labor. He went to Deltorto and to one of his two carpenters and told them of this, to which each answered that he had not known it. On the 16th he went again to the job where he found Deltorto and both carpenters, and in the hearing of the other carpenter, he then told Deltorto that the job was "unfair" because the electrical work was being done by non-union labor. Deltorto repeated that he had not known it, and Patterson replied that he was "sorry" and left; but very shortly thereafter came back with a placard, bearing the legend: "This job is unfair to organized labor," with which he began picketing the premises. The second carpenter who had overheard the talk between Deltorto and Patterson, saw Patterson picketing the site, and told the other. They both got down from the scaffold, where they had been working, and, after reading the legend, quit work and went home. Patterson thereupon stopped picketing; but he called up Giorgi the same night and told him that he would have to replace Langer with a union contractor or he could not complete the job. Giorgi told Langer of this, who agreed to throw up his contract and did no further work on the house. A few days later Giorgi told Deltorto that Langer had done so, and the two carpenters went back to the job.

The examiner did not find whether Patterson "induced" or "encouraged" the two carpenters to leave the job; and it was unnecessary for him to do so because he held that

in any event § 8 (c) of the Act would excuse the picketing since it had consisted of no more than an expression of "views, argument, or opinion," without "threat of reprisal, or force, or promise of benefit." Three of the five members of the Board held that § 8 (c) did not modify § 8 (b) (4) (A); that Patterson did "induce or encourage" the two [fol. 326] carpenters to refuse in concert to work on the job; and that he did so for the purpose of forcing Giorgi to "cease doing business" with Langer. The two other members of the Board did not pass upon these issues, because they held that the controversy involved only a "local enterprise," whose effect upon interstate commerce was too remote to justify the Board's taking jurisdiction. The union argues that, even though the Board had jurisdiction in the sense that Patterson's act "affected" commerce, the occasion was too trivial to justify intervention, as the minority members thought. We should hesitate to say that we could have power ever to review the Board's action because we thought the situation was unimportant; but we need not now decide more than that, if there may be such situations, they must be frivolous beyond rational question, and that the case at bar was certainly within the area of fair differences of opinion, which we must not invade.

In the case at bar we do not understand that any of the five members thought that Patterson's acts did not "affect" commerce within the meaning of the Act; and at any rate we are altogether of the opinion that they did. It is now abundantly established that in the Labor Relations Acts Congress meant to exercise to the fullest extent its power over interstate commerce;* and there can no longer be any doubt that the constitutional scope of that power covers occasions such as this. Langer's activities would alone be enough. In order to perform his part of the work, small though it was, he had to go from New York to Connecticut; and the materials which he used upon the job he had to bring from New York. Besides, his general business re- [fol. 327] quired him continuously to import substantial

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* *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *N. L. R. B.* v. *Fainblatt*, 306 U. S. 601; *Polish National Alliance* v. *N. L. R. B.*, 322 U. S. 643; *United Brotherhood* v. *Sperry*, 170 Fed. (2) 863, 867 (C. A. 10).

amounts of material from other states into New York, and he did a substantial amount of work in Connecticut in addition to the job in question, as well as work for large contractors whose own interstate activities were very large indeed. Giorgi's headquarters were also in New York, whence, like Langer, he had to travel to Greenwich to supervise his employees; moreover, the materials which he used upon the job he had brought from New York; and his business, again like Langer's, extended into other states in substantial amount. It was Patterson's purpose to put an end to Langer's activities on the house by preventing Deltorto from proceeding with his contract, and thus compelling Giorgi to get rid of Langer. It is idle to argue therefore that Patterson's acts did not immediately "affect," or that they were not designed to "affect," these interstate activities. Insignificant as they were, they were enough to satisfy the demands of the Act.* Moreover, since the decision may determine Langer's general operations which extend to many other interstate transactions, it may well be that the Board would have had jurisdiction, even though this particular dispute had involved no more than if the house had been in Port Chester, New York.** On any view it is plain that the appeal must be decided on the merits.

The two carpenters quit work because Patterson "induced" them to do so and they left in "concert." They were not guilty themselves of "an unfair labor practice" it is true, because they were not together a "labor organization" or "agents" of such an organization, but Patterson was such an "agent" and he "induced" them to refuse "in [fol. 328] the course of their employment * * * to perform * * * services" for Deltorto. Patterson's purpose was to force Giorgi "to cease doing business with" Langer. We need not say whether Deltorto, as well as Giorgi, was "doing business with" Langer; it is enough that the purpose was to put pressure on Giorgi through Deltorto, and that Giorgi was certainly "doing business with" Langer. The situation was therefore within § 8 (b) (4) (A), unless it makes a difference that Giorgi, upon whom the "concerted

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* *N. L. R. B.* v. *Fainblatt, supra,* 606; 306 U. S. 601.

** *Polish National Alliance* v. *N. L. R. B., supra,* 322 U. S. 643.

refusal" indirectly impinged, was at work on the same job with Langer with whom the union had its dispute. In short, is a secondary boycott limited to pressure upon third parties who are not engaged in the same venture with the unyielding employer? We can see no basis for such a distinction. The gravamen of a secondary boycott is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it. Its aim is to compel him to stop business with the employer in the hope that this will induce the employer to give in to his employees' demands. We cannot see why it should make any difference that the third person is engaged in a common venture with the employer, or whether he is dealing with him independently. The phrase, "doing business," would ordinarily cover doing any business which the third party is free to discontinue, regardless of whether he is merely supplying materials to the employer, or has subcontracted with him to perform part of a work which the third party has himself contracted to do. The third party coöperates as truly with one to whom he furnishes materials as with a subcontractor. Indeed, when the coercion is upon the third person to break a contract with the employer, his position is more embarrassing than if he may discontinue his relations with the employer without danger of liability. The phrase, [fol. 329] "cease doing business," is general and admits of no such evasion.

Certain situations are, however, to be distinguished. The work of the employer may be so enmeshed with that of the third party that it is impossible to picket one without picketing the other. The case at bar might have been of that sort, had Langer's non-union employees been at work on the job, and Patterson's only purpose been to induce them to quit. Apparently it is the opinion of the Board that the Act does not forbid picketing the employer, even though that has the incidental effect of picketing a third person.* That question we may leave open, as well as whether, in spite of the fact that the section speaks of "*an* object," not of "*the* object," of a "concerted refusal," it forbids a strike even though its purpose includes pres-

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* *N. L. R. B.* v. *Pure Oil Co.*, 84 N. L. R. B. No. 38; *N. L. R. B.* v. *Ryan Construction Corp.*, 85 N. L. R. B. No. 76.

sure on the third person, provided that it also includes pressure against the employer. These questions we may put aside, because Patterson's picketing could have no such double "object"; it impinged only on Deltorto and through him on Giorgi. Finally, we leave open whether the section covers the situation before the court in *Douds* v. *Metropolitan Federation* ** where the supposititious third person was only a disguise for the employer. In the situation before us the picketing was within § 8 (b) (4) (A), and the only remaining questions are whether § 8 (c) permitted it, or whether, if not, § 8 (b) (4) (A) violates the First Amendment as a denial of the right of free speech.

The examiner found that Patterson's acts: his picketing and talks with Deltorto and Giorgi did not contain any "threats of reprisal or force or promise of benefit," [fol. 330] and for that reason he held that § 8 (c) was a defence to any violation of § 8 (b) (4) (A). The Board accepted all his findings save such as were inconsistent with its own report; but held that § 8 (c) did not immunize conduct forbidden by § 8 (b) (4) (A), in this respect following its decision in *In Re Wadsworth Co.* and *Klassen & Hodgson.** Perhaps for that reason we should not assume that it adopted the examiner's findings as to § 8 (c); yet, since its report was not inconsistent with any of these, it seems more probable that it did mean to adopt that finding too, and we shall so assume. If § 8 (c) is an excuse for violations of § 8 (b) (4), it must also be an excuse for violations of § 8 (b) (2), and it appears to us extremely doubtful that it can mean to cover all the "unfair labor practices" which § 8 (b) (2) includes. For example, among these is "causing or attempting to cause" an employer to violate § 8 (a) (3), and it is a violation of § 8 (a) (3) for an employer to discriminate against an employee in order to induce him to join a union, or dissuade him from joining one. We do not believe that Congress meant to allow a union to persuade an employer so to discriminate, even though it does so without threats or promises. Section 8 (b) (2) also forbids "causing or attempting to cause" an employer to discriminate against an employee, because he

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** 75 Fed. Supp. 672.

* *In Re United Brotherhood of Carpenters,* 81 N. L. R. B. No. 127.

has been put out of a union for any reason but failure to pay his dues; and again we do not believe that Congress intended to make such attempts lawful, if unaccompanied by threats or promises. Coming then to § 8 (b) (4), are we to suppose that § 8 (c) means to excuse a union or its agent who induces another union to strike for any of the four purposes forbidden in that section, provided this be done without threat or promises? An affirmative answer [fol. 331] means that, although it is unlawful for the union itself to strike for the purpose in question, § 8 (c) excuses the inducing union which causes it to do so. That would be an exception to long settled principles of civil and criminal liability; for he, who provokes or instigates a wrong, makes himself a party to the wrong, and is equally liable with the perpetrator. This was apparently settled as to civil liability at least as early as the third quarter of the eighteenth century: "not only he who does an act, but who commands or procures it to be done" is a trespasser.* As the *Restatement of Torts* ** puts it: "for harm resulting to a third person from the tortious conduct of another, a person is liable if he (a) orders or induces such conduct.† One striking illustration is inducing a breach of contract by the obligor;†† or inducing the termination of a terminable business relation, which would have otherwise continued.††† The same doctrine prevails as to criminal liability. The principle, long embodied in § 2 of the Criminal Code,†††† which defines as a principal anyone who "aids, abets, counsels, commands, induces, or procures" the commission of the forbidden act,††††† goes back as far as

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* *Barker* v. *Braham*, 2 W. Blacks, 866, 868.

** § 876 (a).

† *Ewald* v. *Lane*, 104 Fed. (2) 222 (C. A. D. C.); *Hickman* v. *Taylor*, 75 Fed. Supp. 528, 531, 532; aff'd 170 Fed. (2) 327, 329) (C. A. 3).

†† *Angle* v. *Chicago & St. Paul Railway Co.*, 151 U. S. 1; *Bitterman* v. *Louisville & Nashville R. R. Co.*, 207 U. S. 205; *Robins Dry Dock & Repair Co.* v. *Flint*, 275 U. S. 303.

††† *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229.

†††† § 2, Title 18, U. S. C.

††††† *Nye & Nisson* v. *United States*, 336 U. S. 613, 618, 619.

Bracton,†††††† who at folio 142 declared: "for it is colloquially said that he sufficiently kills who advises (*praecipit*) killing." †††††††

[fol. 332] It appears to us therefore highly unlikely that by § 8 (c) Congress meant to abolish a doctrine, so deeply embedded in our civil and criminal law. Nor is it necessary to give the words that revolutionary significance. The Supreme Court had decided under the Labor Relations Act that it was not an "unfair labor practice" for an employer to address a meeting of his employees, if he went no further than to put his side of the case against collective bargaining:* and whether *Thomas* v. *Collins*** advanced beyond that doctrine, we need not say. Nevertheless, there are passages in the opinion (*e.g.* pp. 535-539) which may seem to hold that even unquestioned advocacy of violating a law may be so enmeshed with arguments designed to show that it ought not to have been passed, that the utterance as a whole is lawful. Conceivably, in deference to such a doctrine Congress may have intended by § 8 (c) to make lawful the expressions of "views, argument or opinion" which have such a double character: *i.e.* which, although they are inescapably provocations, are as inescapably discursive arguments. Nevertheless, even on that assumption, in order to excuse the utterance, *sub specie* inducement, it must be accompanied by something which can fairly be deemed the expression of "views, argument or opinion," else it is bare instigation, which § 8 (c) does not protect.

Although it follows that § 8 (c) would not have protected Patterson's utterances, had it been an "unfair labor practice" for the carpenters to quit, the question remains whether it makes a difference that they did not commit any wrong in doing so. We think not. We see no reason to suppose that the same words: "the expressing of any views, argument or opinion," should have one meaning as an ex- [fol. 333] cuse for inducing a union to strike, and another for inducing members individually to strike Section 8 (b)

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†††††† *United States* v. *Peoni*, 100 Fed. (2) 401 (C. A. 2).

††††††† *Pollack & Maitland*, Vol. 11, p. 507.

* *N. L. R. B.* v. *Virginia Electric & Power Co.*, 314 U. S. 469.

** 323 U. S. 516.

(4), which defines the wrong, draws no such distinction, and the evil against which it is directed is precisely the same in either alternative: drawing a neutral into an industrial dispute. Congress might not indeed have made it unlawful for a union to induce individuals to strike in aid of a boycott; it might have thought that until the sanction invoked was a strike by some corporate body, like a union, the evil was not serious enough to call for legislative intervention. It did not so limit its purpose; it made it a wrong to induce employees individually to strike, and, while it did not declare its reason for making unlawful only a strike by the corporate body itself—the union—the reason is not far to seek. Almost certainly Congress did not wish to expose individual employees to an action for an injunction or for damages.* Since it did wish to make the corporate bodies and their officers so responsible, no reason occurs to us why the same words should have one meaning, when invoked as an excuse for a union which induces another union to strike, and another when the same union induces individual members of the other union to strike.

If, as *arguendo* we are assuming, § 8 (c) covers all utterances which contain more than bare inducements and are accompanied by discursive argument, no constitutional doubts can arise as to the validity of § 8 (b) (4) when applied to the facts at bar. It never has been held, save by the most extreme partisans, if indeed even by them, that the First Amendment protected all verbal acts as such. The interest, which it guards, and which gives it its importance, presupposes that there are no orthodoxies—religious, political, economic, or scientific—which are immune from debate and dispute. Back of that is the as- [fol. 334] sumption—itself an orthodoxy, and the one permissible exception—that truth will be most likely to emerge, if no limitations are imposed upon utterances that can with any plausibility be regarded as efforts to present grounds for accepting or rejecting propositions whose truth the utterer asserts, or denies. No doubt it is difficult to know when an equivocal utterance has plainly emerged out of its penumbra into the full light of unalloyed incitement; and that difficulty may justify protecting all that are within the ambivalent area. Be that as it may, the last decision

* § 187 (b), Title 29, U. S. C.

of the Supreme Court * leaves no doubt that when a legislature has forbidden certain conduct in an industrial dispute—in that case a combination in restraint of trade—the First Amendment does not excuse picketing to compel an employer to join the combination, even though the pickets carry placards which bear statements of the grievances involved. Such utterances are not within any shadow zone which exempts them, as being addressed to the reason, as designed to convince others upon the merits—in the words of § 8 (c) itself—as "views, argument or opinion." Congress, in the search for a compromise between the conflicting interests of employees in collective bargaining and that of neutrals in avoiding involvements in quarrels not their own, decided to draw a line at secondary boycotts; and the propriety of decision is not for us. The constitutional limitations upon its realization are of course as absolute as upon the realization of any other legislative decision; but it should not be forgotten that the words, which have so often been repeated as though they were a definitive rubric in this field,** were introduced by the following clause: "I do [fol. 335] not doubt for a moment that upon the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish," etc.

Order affirmed; an enforcement order will be entered.

CLARK, Circuit Judge (dissenting):

The question which to me seems decisive is whether Patterson's picketing constituted only a "secondary" boycott. This is not analyzed to any extent in the opinion; there is only an acceptance of the premise that a primary boycott must be against Langer, the employer of the electricians. Then appear, at least by implication, the subordinate premises that boycotts against Giorgi and Deltorto are against not "the employer who alone is a party to the dispute," but "some third party who has no concern in it." And there is a suggestion of a different case where "the work of the employer may be so enmeshed with that of the third party that it is impossible to picket one without picketing the other," as might have been true here "had Langer's non-union employees been at work on the job, and Patterson's

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* *Giboney* v. *Empire Storage Co.*, 336 U. S. 490.

** *Abrams* v. *United States*, 250 U. S. 616, 627.

only purpose been to induce them to quit." This assumption as to the nature of the picketing, which is so decisive of the case, seems to me at variance with economic reality. For Giorgi's giving Langer the contract is the very heart of the matter; and if the union is barred from reaching Giorgi at all, its traditional weapons are blunted and perhaps destroyed. I should regard it here as legitimate union activity—within the purport of the Labor Management Relations Act—for Patterson to set a picket line which would reach Giorgi within its direct orbit and Deltorto as enmeshed with Giorgi.

[fol. 336] In a practical sense the immediate cause of trouble for the union is Giorgi in bringing onto this job—which he initiates and controls—a non-union subcontractor. Giorgi does it presumably for the natural reason that he thus obtains a low rate. If he can thus secure low rates as desired and the union is enjoined by act of the federal government from any protesting action, he has a tremendous incentive to employ not one, but many a, non-union contractor. And if the union is restricted from doing anything other than picketing the subcontractor, it may be left in a decidedly weak condition. In fact the smaller the job, the weaker it is likely to be. If Langer employed two or three hundred workmen, a picket line might well achieve some success with at least some of these workmen. Here, however, Langer's total contract for both labor and material was $325. It surely will not be a problem to obtain the two or three non-union men needed to carry through this job, particularly if his contract with Giorgi is to have the sanction of the governmental injunction behind it. And then the union is quite remediless. But all the reasons for allowing it to strive for economic security against Langer apply equally—if not more so in view of his crucial relation in the job—to a like strife against Giorgi.

The contrary view leads also to other anomalies. Thus the union is to be enjoined from picketing Giorgi when Langer has one or two employees; if, however, Langer's contract is so small that he does all the work himself, then the union can picket Giorgi for hiring a non-union man. On the other hand, whenever the work is parceled out among groups, picketing of any but the limited electrical group is prevented. Is the mere form of separate or non-separate legal entities to be made thus decisive? Suppose the con-

tract to be with a very large contracting concern working through departments. Would the picketing then also be confined to its electrical department, or would this lack of [fol. 337] separate legal personality serve to prevent the result? Surely economic substance, rather than form, should control. The doctrine of enmeshed employment, applied by the Board and distinguished away in the opinion, presents perhaps the greatest anomaly of all . Thus picketing directed against a main employer remains still primary even though it may include special picketing directed intentionally against a subcontractor on the ground of the main employer. *Ryan Construction Corp.*, 85 N. L. R. B. No. 76; *Pure Oil Company*, 84 N. L. R. B. No. 38. If these cases are sound—and it is believed they are within the intent and purpose of the Act—then it would seem that at least equally picketing against a subcontractor which reaches the main contractor as a part thereof would be permissible And *a fortiori* should this be so the more closely the main contractor can be held a causative factor in the non-union employer's activities. And yet in this present decision by a bare majority of the Board these decisions were not cited, although its counsel here attempts to distinguish them as referring to acts only "incidental" to the picketing of the "primary employer."

Perhaps the difficulty comes from the use of those vague terms "primary" and "secondary," which are not terms of either science or art or of the statute and which serve only to confuse and to contradict. True, an avowed purpose of the Act was to prohibit "secondary" boycotts; but the implied limitation of § 8(b)(4)(A), 29 U. S. C. A. § 158(b)(4)(A), to permit "primary" boycotts is thus being properly held to include situations where other employers are at least incidentally affected. Indeed, it seems hardly possible to think of Giorgi and Deltorto, particularly the former, as those "neutrals having no relation to either the dispute or the industry in which it arose," *Carpenters and Joiners Union of America, Local No. 213* v. *Ritter's Cafe*, 315 U. S. [fol. 338] 722, 728, for whose protection the sponsors of the Act were solicitous.[1]

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[1] See Senator Taft's statement concerning § 8(b)(4)(A): "This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees." 93 Daily Cong. Rec. 4323, April 29, 1947.

We have already had occasion to discuss this problem of the extent of the primary boycott in *N. L. R. B.* v. *Wine, Liquor & Distillery Workers Union*, 2 Cir., 178 F. 2d 584. There we actually held that there was not enough connection between the employers involved to make the boycott anything but secondary. In so doing, we distinguished, thus accepting the force of, Judge Rifkind's carefully reasoned decision in *Douds* v. *Metropolitan Federation of Architects, Engineers, Chemists and Technicians, Local 231*, D. C. S. D. N. Y., 75 F. Supp. 672, to the effect that the limits of a primary boycott extend to include the activities of a business "ally" of the employer. This, of course, does not include merely a sympathizing employer, but rather, as here, one closely tied up in the very business itself. This doctrine seems rational in itself and also to have the desirable result of settling all doubts as to the constitutionality of the Act on this score. As was pointed out in *Mills* v. *United Association of Journeymen and Apprentices of Plumbing & Pipe Fitting Industry of U. S. and Canada*, D. C. W. D. Mo., 83 F. Supp. 240, 245, this Act should not be construed to permit of a subterfuge enabling "a principal contractor, whose relations with labor and with employees were unfavorable, to hide behind a more favorable relationship of a subcontractor." Neither should the converse be true. On the basis of these authorities, including the two Board decisions, and of this reasoning, I think the picketing here should be held permissible and enforcement of the order refused.

[fol. 339] IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, and WILLIAM PATTERSON, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

NOTICE OF SUBMISSION OF DECREE

To: Sydney A. Syme, Esquire, 201 Main Street, White Plains, New York; Louis Sherman, Esquire, Messrs. Louis Sherman & Philip Collins, 1200—15th Street N. W., Washington 5, D. C.

Please take notice that on March 29, 1950, the proposed decree, a copy of which is annexed hereto and made a part

hereof, drafted pursuant to this Court's opinion of February 24, 1950, will be transmitted to the Judges of the United States Court of Appeals for the Second Circuit by the Clerk for signature.

(S.) A. Norman Somers, Assistant General Counsel, National Labor Relations Board.

Dated: March 24, 1950.

[fol. 340] IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, and WILLIAM PATTERSON, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before L. Hand, Swan, and Clark, Circuit Judges

This cause came on to be heard upon the petition of the National Labor Relations Board to enforce its Decision and Order dated April 12, 1949. The Court heard argument of respective counsel on January 4, 1950, and has considered the briefs and the transcript of record filed in this cause. On February 24, 1950, the Court, being fully advised in the premises, handed down its decision enforcing, the said order. In conformity therewith, it is hereby

Ordered, adjudged, and decreed that the Respondents, International Brotherhood of Electrical Workers, Local 501, A. F. of L., and William Patterson, the business representative of Local 501, and their agents, shall:

1. Cease and desist from inducing or encouraging the employees of Nicholas Deltorto or any employer, by picketing or related conduct, to engage in a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Giorgi Construction Co. or any other empoyer or person to cease doing business with Samuel Langer.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the National Labor Relations Act:

(a) Post in conspicuous places at the business office of Local 501, in the city of Mount Vernon, New York, copies of the notice attached hereto as Appendix A. Copies of the [fol. 341] notice, to be furnished by the Regional Director for the Second Region, of the National Labor Relations Board, New York, New York, shall, after being duly signed by a representative of Local 501 and by William Patterson as business representative of said Local, be posted immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said posted notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Second Region, of the National Labor Relations Board, New York, New York, in writing, within ten (10) days from the date of this Decree, what steps the Respondents have taken to comply herewith.

(S.) L. Hand, Judge, United States Court of Appeals for the Second Circuit. (S.) Thomas W. Swan, Judge, United States Court of Appeals for the Second Circuit.

Filed: April 6, 1950.

[fol. 342] APPENDIX A

Notice

To all Members of International Brotherhood of Electrical Workers, Local 501, A. F. of L.

Pursuant to a Decree of the United States Court of Appeals for the Second Circuit enforcing a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

We will not induce or encourage employees of Nicholas Deltorto or any other employer, by picketing or

related conduct, to engage in any strike or concerted refusal to perform services in the course of their employment with the object of forcing or requiring Giorgi Construction Co. or any other person to cease doing business with Samuel Langer.

International Brotherhood of Electrical Workers, Local 501, A. F. of L., by ——— ———, ——— ———, Business Representative, International Brotherhood of Electrical Workers, Local 501, A. F. of L.

Dated ——— —, ———.

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

[fol. 343] [Endorsed:] United States Court of Appeals, Second Circuit. Filed April 5, 1950. Alexander M. Bell, Clerk.

[fol. 344] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 345] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 108

ORDER ALLOWING CERTIORARI—Filed December 11, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED
JUN 2 1950
CHARLES ELMORE CROPLEY
CLERK

No. [redacted]108

In the Supreme Court of the United States

OCTOBER TERM, [redacted]1950

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON,
PETITIONERS,
v.
NATIONAL LABOR RELATIONS BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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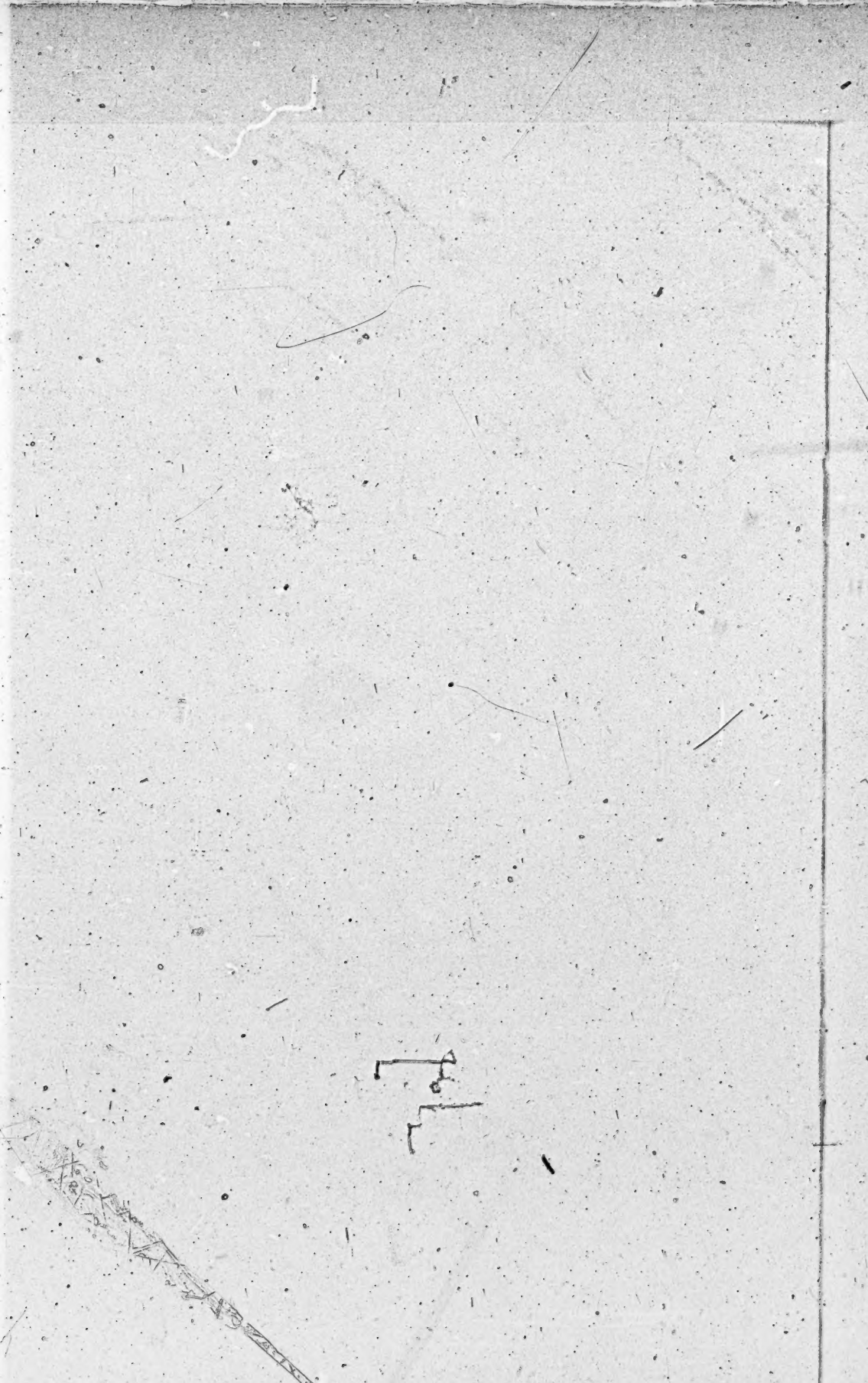

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON, PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD

PETITION OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON FOR A WRIT OF CERTIORARI TO THE U. S. COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the decree of the United States Court of Appeals for the Second Circuit, entered April 6, 1950 (R. 336-337), affirming, by a divided court of two to one, an order made by the National Labor Relations Board, by a divided Board of three to two, declaring petitioners to have been guilty of unfair labor practices under Section 8(b)(4)(A) of the Labor Management Relations Act, 1947, generally known as the Taft-Hartley Act (herein referred to as the "Act").

OPINIONS BELOW

The opinion of the Court of Appeals (R. 323) is reported officially at 181 F.(2d) 34. The findings of fact, conclusions of law and order of the Board issued April 12, 1949 (R. 295-300) are reported in 82 N.L.R.B. 1028. The Trial

Examiner's intermediate report and recommended order, issued December 31, 1948, are reported in 82 N.L.R.B. 1028, 1031 *et seq.*

JURISDICTION

The decree of the Court of Appeals was entered on April 6, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). The original proceeding to review the order of the Board was filed by the petitioners under the provisions of Section 10 (f) of the Act.

On April 17, 1950 the Court of Appeals entered an order staying execution of the decree on condition that the application for a writ of certiorari to the Supreme Court of the United States be filed within thirty days from April 17, 1950.

On May 15, 1950 it was further ordered that the Board show cause on the 5th day of June, 1950 why the decree should not be withheld pending final determination of the petitioners' application for a writ of certiorari and that the enforcement of the decree be stayed pending final determination of the motion to show cause.

QUESTIONS PRESENTED

The following questions are presented:

1. Whether the picketing in this case constituted a secondary boycott in violation of Section 8 (b)(4)(A) of the Act.
2. Whether the Board's order to the local union and its representative, as affirmed by the U. S. Court of Appeals for the Second Circuit, to cease and desist from picketing, violated the First Amendment to the Constitution.
3. Whether the labor dispute affected commerce within the meaning of Section 2, subsections (6) and (7).
4. Whether the Court erred in issuing a blanket order on the findings of the Board in this case.

STATUTE INVOLVED

The pertinent provisions of the Act (61 Stat. 136, 29 U.S.C., Supp. II, 141, *et seq.*) are set forth in the Appendix *infra* pages 45 to 50.

STATEMENT

Local Union No. 501 of the International Brotherhood of Electrical Workers, A. F. of L. (hereinafter referred to as "the local") is a subordinate local having jurisdiction in the County of Westchester in the State of New York, and in the Town of Greenwich, County of Fairfield, and State of Connecticut, having its office in the City of Mount Vernon, County of Westchester and State of New York, within the Southern District of New York.

Patterson is the agent or business representative of Local Union No. 501, residing in the City of White Plains, County of Westchester and state of New York, within the Southern District of New York.

On June 16, 1948, Samuel Langer residing at Port Chester, Westchester County, New York, filed an amended charge with the National Labor Relations Board, (hereinafter referred to as "the Board"), wherein he charged that Local 501, and Patterson (hereinafter referred to as "petitioners"), had been and are engaged in unfair labor practices within the meaning of Section 8 (b) subsections (1) (A) and (4) (A) of the Act.

On June 24, 1948 the Board, through its Regional Director for the Second Region, issued and served a complaint upon petitioners alleging that:

> "The acts of (petitioners) constitute unfair labor practices affecting commerce within the meaning of Section 8 (b) subsections (1) (A) and (4) (A) and Section 2 subsections (6) and (7) of the Act" (R. 9).

In March 1948, and ensuing months, a one family, private

residence was being constructed in the Town of Greenwich in the State of Connecticut (R. 77).

The Giorgi Construction Company had the general contract for this job, and sublet various portions of the work, to wit; the carpentry work to Nicholas Deltorto, and the electrical work to Samuel Langer, the complainant herein (R. 39, 40, 41).

The gross amount of Langer's electrical subcontract was $325.00 (R. 53) on a total general contract of $15,200, covering the entire cost of the dwelling (R. 40).

All of the electrical work performed by Langer on this job was done by non-union labor (R. 92).

The testimony taken at the hearings before the Trial Examiner conclusively established that Langer was a persistent employer of non-union labor; that at one time he operated under an agreement with Local Union No. 501, by which he agreed to employ only union labor but, while operating under such agreement, he persisted in employing non-union labor, as a result of which his agreement was abrogated (R. 92, 93).

A day or two prior to April 16, 1948, Patterson visited the job and ascertained that the electrical work was being done by Langer with non-union labor.

On April 16, Patterson returned to the job and found the non-union condition still existed. He thereupon went to his auto, took out a placard reading "This job is unfair to organized labor; I.B.E.W. 501 A.F.L.", donned the placard and began to walk up and down in front of the job (R. 162).

Two carpenters who were then working on the job in behalf of the subcontracting carpenter, Deltorto, shortly after ceased work and left the job (R. 161).

That evening Patterson telephoned Giorgi, the general contractor, and told him that the job was unfair; that

Langer was non-union and that probably no other skilled trades would work on the job (R. 46, 47).

Langer had commenced and completed the "roughing in" electrical work on the dwelling but had some additional work to perform on his $325.00 contract. There is testimony showing that Langer finished about 60% of the electrical work for which he had contracted and that approximately 40% remained to be performed (R. 248; 53).

There was not a scintilla of evidence at the hearing to indicate that any of the journeymen employed on the job were ordered off the job by Patterson or any other person. The picketing was entirely peaceful.

I

The Trial Examiner's Intermediate Report and Recommended Order.

The Trial Examiner found that Samuel Langer was engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act (R. 283). He conceded that the value of materials used and intended to be used by Langer on the house was not large (R. 248), but based his findings on the conclusion that "numerous strands in the web of commerce, several of which crossed state lines, were interlaced in the construction of the Greenwich house" (R. 251). There was no direct evidence on the amount of materials used or allocated for use in the performance of the $325.00 electrical contract (R. 248 fn. 12). The Trial Examiner relied on the interstate status of the companies supplying Langer (R. 249 - 250), Langer's total annual business of $24,443.96 and the value of materials secured from points outside the State of New York by Langer in connection with his general business (R. 248). Similar reasoning was applied to the status of Giorgi and Deltorto (R. 246 - 247).

The Trial Examiner recommended the dismissal of the allegations in the complaint alleging violation of Section 8 (b) (1) (A) of the Act together with the allegations in the complaint alleging that respondents threatened to induce and encourage employees of other employers to engage in violation of Section 8 (b) (4) (A) of the Act (R. 260 - 265; 283).

He also recommended dismissal of the main allegation in the complaint alleging violation of Section 8 (b) (4) (A) with respect to the Greenwich job on the ground that Patterson's picketing on April 16, 1948 was an expression of views, argument or opinion and the dissemination thereof in written and visual form, containing no threat of reprisal or force or promise of benefit and that such picketing by virtue of the protection of Section 8 (c) did not constitute an unfair labor practice (R. 281). The Trial Examiner stressed the fact that the picketing was not a joint enterprise and the evidence revealed no covenant between the electrical worker and the carpenter either directly or through the Westchester Building Trades Council requiring each to respect the other's picket line and concluded that the implicit threat and promise is of the same general nature which it can be argued is embodied in every appeal for assistance by any person or group sharing a common interest with any other person or group (R. 280 - 281).

II

The Board's Decision and Order.

The Board divided three to two on the question of whether jurisdiction should be asserted. The two dissenting members of the Board stated that: "We believe the operations involved in this case constitute an essentially local enterprise with only the most remote effect upon commerce. Consequently, we do not desire to exercise our discretion to assert jurisdiction."

The majority of the Board ordered that the complaint be dismissed insofar as it alleges: "(1) that the respondents (petitioners herein) violated Section 8 (b) (4) (A) by threatening to induce or encourage employees of employers other than Nicholas Deltorto or Giorgi Construction Company to strike or refuse to perform service in order to force said other employers to cease doing business with Samuel Langer and (2) that the respondents (petitioners herein) violated Section 8 (b) (1) (A) of the Act."

The majority of the Board ruled, however, that Section 8 (c) does not immunize peaceful picketing under the circumstances of this case and held that petitioners had violated Section 8 (b) (4) (A) of the Act by picketing the Greenwich job on April 16, 1948.

III

The Decision in the Court Below.

The Court of Appeals affirmed the order of the Board in an opinion issued February 24, 1950 by a divided vote of two to one and entered its decree on April 6, 1950. The Court stayed its order pending the filing of the petition for writ of certiorari by an order dated April 17, 1950, and by a further order dated May 15, 1950.

The Court ruled that the appeal must be decided on the merits because insignificant as Patterson's acts were, they were enough to satisfy the jurisdictional demands of the Act. The Court relied upon the fact that Langer had to go from New York to Connecticut in order to perform his part of the work, small though it was and that he had to bring materials from New York for use on the job. There was also reliance upon Langer's general business and the fact that Giorgi's headquarters were also in New York, that he had to bring materials from New York and that his general business extended into other states in substantial amounts.

The Court held that Patterson's purpose was to force Giorgi to "cease doing business with Langer" and that a distinction could not be made on the issue of the secondary boycott as between a third person engaged in a common venture with the employer and a third person dealing independently with the employer. In particular, the Court interpreted the phrase "doing business" as ordinarily covering any business which the third party is free to discontinue regardless of whether he is merely supplying the material to the employer or has subcontracted with the employer to perform part of the work which the third party has himself contracted to do.

The Court conceded that "certain situations are, however, to be distinguished." Three types of cases were listed: (1) Where the work of the employer may be so enmeshed with that of the third party that it is impossible to picket one without picketing the other; (2) A strike which has for its purpose a dual pressure on the third person and the employer; (3) Where the third person is only a disguise for the employer.

The dissenting Judge was of the opinion that the picketing should be held permissible and enforcement of the order refused on the ground that it did not constitute a secondary boycott within the meaning of Section 8 (b) (4) (A) of the Act. He relied upon the general legislative history with respect to the intent of Section 8 (b) (4) (A) as illustrated by Senator Taft's statement concerning this section: "This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and an employee" (93 Daily Congressional Record 4323, April 29, 1947).

He pointed out that the immediate cause of the labor dispute in the instant case was Giorgi's act of bringing on

to the Greenwich job—which he controls—a non-union electrical sub-contractor. It was his opinion that Giorgi's act of giving Langer the contract is the very heart of the matter; and if the Union is barred from reaching Giorgi at all, its traditional weapons are blunted and perhaps destroyed. He considered that it is legitimate union activity within the scope of the Act for Patterson to set a picket line which would reach Giorgi within its direct orbit and Deltorto as enmeshed with Giorgi.

The dissenting Judge emphasized the inconsistency of the instant decision with the decisions of the National Labor Relations Board in *Ryan Construction Corporation*, 85 N.L.R.B. No. 76 and *Pure Oil Co.*, 84 N.L.R.B. No. 38. He also relied upon a decision of this court in *Carpenters and Joiners Union of America, Local No. 213 v. Ritter's Cafe*, 315 U. S. 722, 728; *Douds v. Metropolitan Federation of Architects, Engineers, Chemists Local 231*, 75 F. Supp. 672 (S. D. N. Y.) as recognized by *N.L.R.B. v. Wine, Liquor and Distillery Workers Union*, 178 F. 2nd 584 (2nd Cir.), and *Mills v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada*, 83 F. Supp. 240, 245 (W. D. Mo.).

The Court further held that Section 8 (c) does not immunize the conduct which was the subject of the Board's action and stated its opinion that Section 8 (c) applies, if at all, to cases where discursive argument accompanies language of inducement to act in violation of the statute. The Court also held that the inducement of individuals to withdraw from their employment was as much a violation not protected by Section 8 (c) as inducement of a union to call a strike in violation of Section 8 (b) (4) (A). The Court further held that Section 8 (b) (4) (A) and Section 8 (c), as interpreted by it, did not violate the First Amendment to the United States Constitution.

SPECIFICATION OF ERRORS TO BE URGED

1. The court below erred in holding that the primary picketing of the single construction job involved in this case constituted a secondary boycott in violation of Section 8 (b) (4) (A) of the Act.
2. The court below erred in failing to hold that the order in this case violates the First Amendment to the Constitution.
3. The court below erred in holding that Patterson's acts affected commerce within the meaning of Section 2, subsections (6) and (7) of the Act.
4. The court below erred in issuing a blanket order on the Board's findings in this case which dismissed the complaint insofar as it related to any alleged violations of the Act with respect to employers other than the employers on the particular construction job.

REASONS FOR GRANTING THE WRIT

1. The court below held by a divided vote that the labor activities in this case constituted a secondary boycott prohibited by Section 8 (b) (4) (A) of the Act. This decision presents an important question of Federal law which should be, but has not been, settled by this Court.

The traditional means employed by the labor unions in the building and construction industry to organize has been through the picketing of unfair jobs. As stated by the dissenting Judge below, the decision of the majority has the effect of blunting and perhaps destroying the traditional weapons of the union (R. 333).

Obviously, this is a matter of vital importance to all the unions, employers and employees in the building and construction industry. The concern of labor over this question of Federal law is made even more acute by reason of the fact that the National Labor Relations Board and its General Counsel have found it impossible to apply the repre-

sentation election procedures of the Labor Management Relations Act, 1947, to the building trades. Thus, while the usual method for securing organization is denied by the decision of the majority in this case, the alternative provided for all other unions in industries subject to the Act is likewise denied to the unions in the building trades because of the impracticability of the election procedures of the Act which were fashioned for other industries.

The Langer case was decided by the National Labor Relations Board on April 12, 1949 (R. 299). More recent decisions of the National Labor Relations Board on similar issues of law have created a considerable area of doubt as to its own position. The Board has decided in the *Ryan Construction Corporation case,* 85 N.L.R.B. No. 76, 24 L.R.R.M. 1424, that primary picketing of the employer's premises does not constitute a secondary boycott even though it affects another employer engaged in the performance of work on the same premises.

In this case, the UE picketed the plant of the Bucyrus Company in the course of an economic strike. Pickets were placed around the entire area, including a special gate used by the employees of Ryan Construction Company which was performing a contract to construct an addition to Bucyrus. Ryan's employees refused to pass the picket line at their gate. The Board in a 4 to 1 decision held the activity did not violate the secondary boycott provisions of the Act:

> "As the record reveals and the Trial Examiner finds, the Respondents, in support of their demands on Bucyrus, proceeded to picket the entire Bucyrus premises, including the gate that had been cut through the fence to provide ingress for Ryan employees to the site of a construction project Ryan was performing for Bucyrus. All this picketing was therefore *primary* picketing. Concededly an object of the picketing was

to enlist the aid of Ryan employees, as well as that of employees of all other Bucyrus customers and suppliers. However, Section 8 (b)(4)(A) was not intended by Congress, as the legislative history makes abundantly clear, to curb primary picketing. It was intended only to outlaw certain *secondary* boycotts, whereby unions sought to enlarge the economic battleground beyond the premises of the primary employer. *When picketing is wholly at the premises of the employer with whom the union is engaged in a labor dispute, it cannot be called 'secondary' even though, as is virtually always the case, an object of the picketing is to dissuade all persons from entering such premises for business reasons.* It makes no difference whether 1 or a 100 other employees wish to enter the premises. It follows in this case that the picketing of the Bucyrus premises, which was primary because in support of a labor dispute *with Bucyrus,* did not lose its character and become 'secondary' at the so-called Ryan gate because Ryan employees were the only persons regularly entering Bucyrus premises at that gate. While we agree that Section 8 (b)(4)(A) represents an intent by Congress to restrict union action to the 'parties immediately involved', as the dissent states, we do not agree that by picketing the Ryan gate the Respondents were enlarging the area of their disputes. The signs and placards carried by the pickets at the Ryan gate, which were the same as the signs carried at other gates of the Bucyrus premises, were directed at Bucyrus, *not Ryan.* In addition, although only Ryan employees and suppliers had in fact used the Ryan gate before picketing started, Bucyrus employees could always also have entered this gate in order to reach their job location."

The dissenting member of the Board made it clear in his opinion that the Board in its decision in the *Ryan* case

reversed its previous ruling in the *Langer* case and similar cases. The majority of the Board made no effort to distinguish the *Langer* case in their opinion.

In the *Pure Oil Company Case,* 84 N.L.R.B. No. 38, 24 L.R.R.M. 1239, decided June 17, 1949, the Board made a similar ruling that a primary strike does not become illegal because the employees of a second employer refuse to cross the picket line at the site of the labor dispute of the employer engaged in the primary dispute.

We believe that the court below erred in holding that the object of Patterson's act was prohibited by Section 8 (b)(4)(A). That section makes it an unfair labor practice for a labor organization or its agents "to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is forcing or requiring any employer . . . to cease doing business with any other person."

The legislative history of the section shows that it was the intent of the Congress to prohibit secondary boycotts which conscript neutrals to the labor dispute. Senator Taft stated succinctly the purpose of Section 8 (b)(4)(A) as follows:

> "This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees" (93 Cong. Record 4323, April 29, 1947).

Although it was undoubtedly the intention of the Congress to reach secondary boycotts, regardless of justification, it is also clear that the section was not intended to go beyond secondary boycotts as defined by Senator Taft in the above quotation.

We contend that the relationship between the general contractor and the electrical subcontractor on this job did not constitute the type of relationship which is covered by the phrase "wholly unconcerned" in the labor dispute.

The majority of the court below was of the view that it made no difference that Giorgi was at work on the same job with Langer and that secondary boycotts are not limited to third parties who are not engaged in the same venture with the unyielding employer. The majority was further of the view that there is no difference between a third person engaged in a common venture with an employer and a third person engaged in an independent relationship with such employer. It held that the relationship between Giorgi and Langer came within the phrase "cease doing business". The court below recognized, however, that certain situations are to be distinguished. Three such categories were listed as open questions:

1. Where the work of the employer may be so enmeshed with that of the third party that it is impossible to picket one without picketing the other. The court conceded that the instant case might have fallen within this category if the picketing had occurred when the non-union employees were at work and Patterson's only purpose had been to induce them to quit.

2. Where the picketing applies pressure to the third person, providing that it also includes pressure against the employer, and

3. Where the supposititious third person is only a disguise for the employer.

The dissenting Judge differed with the majority for the following reasons:

1. Giorgi's act of giving Langer the contract is the very cause of the dispute and the union could therefore set a

picket line which would reach Giorgi within its direct orbit and Deltorto as enmeshed with Giorgi. He also pointed out that the general contractor (Giorgi) secured a direct financial benefit from the employment of a non-union contractor and that all the economic reasons for allowing the union to strive for economic security against Langer apply equally, if not more so, to a like strife against Giorgi.

2. The majority decision leads to anomalous results. The picketing which is prohibited in this case because a contract was let to Langer, would not be prohibited if the general contractor hired the non-union employees directly.

3. The decisions of the Board in *Ryan Construction Corporation* and *Pure Oil Co., supra,* would appear to call for a ruling permitting picketing against a subcontractor which reaches the general contractor as a part thereof.

4. Giorgi was not a "neutral" within the meaning of the phrase as used by this Court in *Carpenters and Joiners Union of America Local Union 313 v. Ritter's Cafe,* 315 U.S. 722, 728.

We contend that the object of Patterson's activities, including the picketing, was to eliminate the non-union conditions on the one construction job which was picketed. The act of picketing was intended to accomplish this objective through any of a number of different means.

In the first place, Giorgi was the active agent in bringing non-union electricians on the construction job. He held the contract for the performance of the entire construction job. It was within his power to employ union or non-union labor. He could do so directly or through subcontractors. Having chosen to establish a non-union condition on the construction job by the employment of Langer, a non-union electrical subcontractor, he could also eliminate the condition by replacing the non-union electricians with

union employees, either directly or through a union electrical contractor.

Under these circumstances, it is entirely clear that Giorgi had a relationship to the dispute which was not limited to the power to cut off Langer from the job. The dispute with Langer was equally, if not more, a dispute with Giorgi who had established the non-union condition.

Secondly, Langer could have signed up with the union after clearing up the legitimate causes of disagreement which had previously prevented the signing of an agreement. This could have been accomplished either through the voluntary withdrawal from employment by the union carpenters on the job or the refusal of the non-union electricians to return to work on a picketed job. The legislative history of the Act is clear in stating that Section 8 (b)(4)(A) of the Act does not prohibit primary strikes for recognition. The conference Report states explicitly that "It is to be observed that the primary strike for recognition (without a Board certification) was not prohibited" (80th Cong. 1st Sess. H. R. 510, pp. 67).

The Board did not find the purpose, or the object, of Patterson's action other than in the general language of the statute (R. 297). The mere fact that non-union electricians were not on the job on the day when Patterson carried his placard at the job does not permit of the conclusion that the picketing was not directed to them. It is entirely unrealistic in the facts of the building trades where crafts come on and go off jobs at various times, to place crucial emphasis on the particular craft or crafts which happen to be on the job when the picketing commences. The picketing constitutes publicity that the job is non-union and the effect of that publicity applies not only to employees on the job but also to crafts which may be in

the position of commencing or, as in this case, returning to work.

Under this latter purpose of Patterson, the fact that the picketing caused a withdrawal of the carpenters from the job would not bring the labor activities in this case under the prohibition of Section 8 (b)(4)(A) since the effect on the employees of Deltorto and the consequent effect on Giorgi were incidental to the permissible purpose of engaging in primary picketing. It is our view that a reading of Section 8 (b)(4)(A) in the light of the legislative history of the Act, shows that the object of labor activities in this case was not to force Giorgi to "cease doing business" with Langer within the meaning of that phrase as used in this section.

In the case of *Mills v. United Association et al.*, 83 F. Supp. 240 (W.D. Mo.) it was held that the relationship between a subcontractor and a principal contractor did not come within the meaning of the term "cease doing business with another person" in Section 303 of the Labor-Management Relations Act, 1947. Section 303 defines prohibited secondary boycotts in the same language as Section 8 (b)(4)(A), but provides for an action for damages in addition to the injunctive restraints provided for violation of Section 8 (b)(4)(A). In dismissing the complaint filed against a local union of the United Association, it was stated:

> " . . . If there is any cause of action alleged, it must be found in the words *'or to cease doing business with any other person'*, and in that connection it will be necessary to determine what is meant, under the Act, by 'doing business'. The allegations of the complaint, which must be taken as true, state that the strike was called or engaged in because the employer was associated with or had contracted with an individual or a group who were obnoxious to the organized labor

group. It is not a question of striking to force the employer to join any group; the absolute reverse is apparent from the pleadings. The term 'doing business' has not been construed by the appellate courts, so far as I can find, in connection with the Taft-Hartley Act. The question was before the district court for the Southern District of New York on January 26, 1948, in *Douds v. Metropolitan Federation of Architects etc.*, 75 F. Supp. 672. Judge Rifkind discussed the question of principal and subcontractor in that case, and held that the parties were 'allies'; that this relationship was brought about by the working conditions growing out of their contract and he refused to determine whether or not the relationship of principal and subcontractor would of itself create the status of ally in such manner as to take it out of the classification of parties 'doing business' with each other. The other instances in which the term 'doing business' has been construed are not sufficiently clear, nor for the most part in point, to be of benefit in this case. In view of the Congressional History of the Act, and the debates in the Senate, it would seem that the relationship between a principal and a subcontractor arising out of the awarding of a subcontract would not within the meaning of the Act be 'doing business' as between the parties. If that were true, it could easily result in a subterfuge and would enable a principal contractor, whose relations with labor and with employees were unfavorable, to hide behind a more favorable relationship of a subcontractor. As said by Judge Rifkind, in the *Douds* case, *supra*, it is my view that the words 'or to cease doing business with any other person' has reference to that which precedes it and must be construed in connection with the question of secondary boycott. It is simply another definition or a further spelling out of the definition of what is necessary to create a secondary boycott. It means

'doing business' as we ordinarily understand it between parties other than those to the particular contract or their allies. For that reason, it is my view that the complaint does not allege a cause of action under section 187 *supra*. (At p. 245).

See also *Douds v. Metropolitan Federation of Architects*, 75 F. Supp. 672.

The close factual relationship between the prime or general contractor and the sub-contractor on a building job has been given legal effect under the State Workmen's Compensation Laws. In *Jennings v. Vincent*, 284 Ky. 614, 145 S.W. (2d) 537, for example, the court held that the general contractor was not "some other person" than the employer within the meaning of the quoted term in a statute giving the injured employee an option to sue such other person under the common law. See *Hill v. American Surety Co.*, 200 U.S. 197.

For all of the above reasons, we contend that the majority of the court erred in its interpretation that Section 8 (b)(4)(A) applies to the labor activities in this case.

We also contend that even if it is assumed that Patterson's acts constituted a secondary boycott prohibited by Section 8 (b)(4)(A) of the Act, nevertheless there was no basis for issuance of the order in this case because Section 8 (c) of the Act immunized the picketing under the facts of the case.

Section 8 (c) follows the enumeration of employer unfair labor practices in Section 8 (a) and union unfair labor practices in Section 8 (b). It provides that

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice *under any of the provisions of this Act, if such expression con-*

tains no threat of reprisal or force or promise of benefit." (Italics supplied.)

It is our view that the Board's affirmation of the Trial Examiner's findings except such as were inconsistent with its own report constituted an affirmation of the Examiner's finding, that in the circumstances of this case the picketing by Patterson and his talks with various parties in this case did not contain any "threats of reprisal or force or promise of benefit". This was also the view of the court below, since it assumed that such was the action of the Board in formulating its conclusions on the subject of the effect of Section 8 (c) in this case (R. 328).

It is our contention that the adoption of this assumption by the court below, which we believe to be correct, required the court to hold that the picketing and Patterson's talks came within the language of Section 8 (c) and therefore did not constitute an unfair labor practice under Section 8 (b)(4)(A) of the Act. The court below has in effect rendered Section 8 (c) empty of any meaning or effect in its possible application to the unfair labor practice provisions of the Act relating to unions, although the provisions of Section 8 (c) continue to have substantial meaning in immunizing certain employer conduct which, previous to the enactment of Section 8 (c), were deemed unfair labor practices under the National Labor Relations Act.

We believe this is directly contrary to the intent of Congress which made a serious point of its desire to give equal freedom to both employers and unions.

The legislative history of the Act shows that the free speech section of the Labor Management Relations Act of 1947 was passed by the House in the following form:

"Sec. 8 (d)(1) Notwithstanding any other provision of this section, the following shall not constitute or

be evidence of an unfair labor practice under any of the provisions of this Act:

"Expressing any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, if it does not by its own terms threaten force or economic reprisal."

The House Report states with respect to this provision of the Bill, that

"This guarantees free speech to employers, to employees, and to unions . . . nothing that anyone says shall constitute or be evidence of an unfair labor practice unless it, by its own expressed terms, threatens force or economic reprisal. This means that a statement may not be used against the person making it unless it, standing alone, is unfair within the express terms of Sections 7 and 8 of the amended Act" (80th Congress, 1st Session, House Report No. 245 p. 33).

The Senate Bill as reported, provided that:

"The Board shall not base any finding of unfair labor practice upon any statement of view or arguments, either written or oral, if such statement contains under all the circumstances no threat, express or implied, of reprisal or force, or offer, express or implied, of benefit."

In its report the Senate explained the provision relating to free speech as follows:

"Another amendment to this section would insure both to employers and labor organizations full freedom to express their views to employees on labor matters, refrain (*sic*) from threats of violence, intimation of economic reprisal, or offers of benefit. The Supreme Court in *Thomas v. Collins* (323 U.S. 516) held, contrary to some earlier decisions of the Labor Board, that the Constitution guarantees freedom of speech on either side in labor controversies and approved

the doctrine of the *American Tube Bending case* (134 F. (2d) 993). The Board has placed a limited construction upon these decisions by holding such speeches by employers to be coercive if the employer was found guilty of some other unfair labor practice, even though severable or unrelated (*Monumental Life Insurance,* 69 N.L.R.B. 247) or if the speech was made in the plant on working time (*Clark Brothers,* 70 N.L.R.B. 60. The committee believes these decisions to be too restrictive and, in this section, provides that if, *under all the circumstances,* there is neither an expressed or implied threat of reprisal, force, or offer of benefit, the Board shall not predicate any finding of unfair labor practice upon the statement. The Board, of course, will not be precluded from considering such statements as evidence" (80th Cong. 1st Sess. S. Rep. No. 105 pp. 23 - 24). (Italics supplied.)

The Conference Report resulted in the provisions now contained in the statute set forth above as Section 8 (c).

The analysis presented by Senator Taft, who was in charge of the Bill, to the Senate on June 5, 1947, which explained the differences between the Conference agreement and the Senate Amendment, set forth the following explanation of the agreement on Section 8 (c):

"Subsection (c) relating to the right of employers, employees and labor organizations to express opinions and views freely *conforms substantially with the language of subsection 8 (d) (1) of the House bill and is a substitute for section 8 (c) of the Senate amendment.* The House conferees were of the opinion that the phrase 'under all the circumstances' in the Senate amendment was ambiguous and might be susceptible of being construed as approving certain Board decisions which have attempted to circumscribe the right of free speech where there were also findings of unfair labor practices. Since this was certainly contrary

to the intent of the Senate, as the accompanying report of the committee with respect to this subsection indicates, *the Senate conferees acceded to the wish of the House group that the intent of this section be clarified.*

"Since the adoption of the conference agreement some inquiries have been received as to whether or not the guarantee of freedom of expression contained in this section is limited to expressions 'which are not printed, graphic. * * *' These words are not words of limitation but were added in the House bill so as to make it clear that freedom of expression was not confined to oral utterances. The language of the report of the House committee makes it clear, moreover, that what the sponsors of the House bill had in mind were primarily oral utterances. There has also been some question raised with respect to the phrase 'constitute or be evidence of an unfair labor practice.' The purpose of this language is to make it clear that the Board is not to use any utterances containing threats or promises of benefit as either an unfair practice standing alone or as making some act which would otherwise not be an unfair labor practice. It should be noted that this subsection is limited to 'views, argument, or opinions' and does not cover instructions, directions, or other statements which might be deemed admissions under ordinary rules of evidence. In other words this section does not make incompetent, evidence which would ordinarily be deemed relevant and admissible in courts of law" (93 Cong. Record 6601). (Italics supplied.)

As stated previously, the above legislative history shows the strong intent of Congress to apply the free speech amendment equally to both employers and unions. It also shows that the Congress intended the National Labor Relations Board to predicate its findings on alleged unfair

labor practices on the language contained in the specific expression which was the subject of the allegation.

The extent of the protection afforded by this amendment to expressions is shown most clearly in the Senate Report which disapproved of the "captive audience" rule of the Board and of the Board's practice in relying upon other evidence of unrelated practices in violation of the Act to make an expression of views, otherwise proper, a violation of the Act.

The Board has in fact applied Section 8 (c) in accordance with the expressed intent of Congress insofar as it relates to employers. Thus, the Board, prior to this section of the Act, considered expressions by employers to "captive audiences" as a basis for finding an unfair labor practice. *Clark Brothers Inc.*, 70 N.L.R.B. 802; affirmed 163 F. (2d) 373 (2nd Cir.). The "captive audience" doctrine has been overruled by the Board on the basis of Section 8 (c) in the case of *Babcock and Wilcox*, 77 N.L.R.B. 577.

The effect of Section 8 (c) with respect to employer unfair labor practices has been to immunize expressions of the employer even when such expressions were associated with something more than the utterance itself. The employer cannot be held to have engaged in an unfair labor practice by speech alone even though it is a well known fact that the economic power of the employer makes expressions by him something more than expressions of views by outsiders having no relationship with the employees which can produce benefit or adverse consequence to them. Such expressions are also immunized even though the employer actually exercises his economic power to require compulsory attendance during working time to listen to his expressions with respect to union matters.

It is our view that, if equal effect is given to Section 8 (c) in its application to alleged union unfair labor practices, the picketing under the circumstances of this case is also immunized by Section 8 (c).

It is not our contention that Section 8 (c) immunizes all peaceful picketing and that the line of distinction is to be drawn between violence and non-violence. It has become customary to think of all peaceful picketing as constituting one category. The fact is that there are different types of peaceful picketing, some of which may secure immunity under Section 8 (c) and others of which do not secure such immunity.

We believe that the crucial fact in this case is that the picketing was carried out by the agent of a union which had no power to cause benefit or harm to the union members on the job. This was not a case of picketing by the representative of a union whose members were on the job. Such picketing might well be construed to fall within the exceptions stated in Senator Taft's analysis quoted above, which noted that the language of Section 8 (c) " is limited to 'views, arguments or opinion' and does not cover instructions, directions or other statements which might be deemed admissions under ordinary rules of evidence."

A similar situation not protected by Section 8 (c) of the Act might be presented if the Building Trades Council of the area having disciplinary powers over the carpenters union, or the members thereof, had engaged in the picketing in accordance with its powers. Section 8 (c) might also be inapplicable to a case where there was no picketing but a more subtle or indirect form of inducement to action had been taken by the carpenters union having jurisdiction over the carpenters, to cease work on the job.

In the instant case the agent of the electricians' union which had no employees on the job and which had no power,

direct or indirect, over the carpenters on the job, expressed an opinion that the job was unfair to labor. The picketing could have been disregarded with impunity by the carpenters on the job and it was in fact found, by the Examiner and apparently affirmed by the Board and the court below, that there was no threat of reprisal or force or promise of benefit contained in the picketing and other talks made by Patterson. We contend that this finding carries with it the conclusion that Section 8 (c) does apply to the facts in this case. The court below apparently realized that it was reading out of the Act any real effect of Section 8 (c) in its application to union unfair labor practices. Its conclusions were based largely on the view that to give Section 8 (c) a meaning as broad as its language would result in nullifying other provisions of the Act. The court below specifically referred to the language of Section 8 (b)(2) which prohibits "causing or attempting to cause" an employer to violate the union security provisions of Section 8 (a) (3). The court said:

> "We do not believe that Congress meant to allow a union to persuade an employer so to discriminate even though it does so without threats or promises."

A similar view was taken with respect to the language of Section 8 (b) (2) which forbids "causing or attempting to cause" an employer to discriminate against an employee because he had been put out of a union for any reason but failure to pay his dues. (R. 328-329).

The National Labor Relations Board has pointed out with respect to this very issue that:

> "The words 'cause or attempt to cause' also clearly imply something more than a bargaining demand. It is noteworthy that the words 'persuade or attempt to persuade' were used in Section 8 (b) (2) in the Senate bill as originally passed, but were changed in conference to 'cause or attempt to cause'. In explaining this

substitution, Senator Taft said that the House conferees had objected to the language 'on the ground that it seemed inconsistent with the provision guaranteeing all parties freedom of expression'" (In the matter of *International Typographical Union* 86 N.L.R.B. No. 115, 25 L.R.R.M. 1002).

It will thus be seen that it was the direct intent of Congress, based on its interpretation of Section 8 (c) of the Act, to prevent Section 8 (b) (2) from having the broad meaning relied upon by the court below in explaining its position which renders Section 8 (c) nugatory insofar as the union unfair labor practice sections of the Act are concerned.

The court below also ruled that Section 8 (c) could not be applicable to Section 8 (b)(4)(A) since that would excuse a union or its agent which induces another union to strike for any of the four purposes forbidden in that section. It relied upon the common law theory establishing criminal or tortious liability for one who advises the commission of a wrongful act. We respectfully contend that the court below overlooked the fact that Section 8 (b)(4)(A) must be taken in conjunction with Section 10 of the Act and its overriding purpose of freeing commerce from obstructions. Section 8 (b)(4)(A) is not intended to punish for wrongs committed. It is rather intended to restrain the performance of actions which are deemed injurious to commerce. The purpose of Congress is achieved by providing for the enjoining of the union which has been induced by another union to commit a prohibited act, since it is the induced union which has jurisdiction over the employees who are engaging in the strike or concerted refusal to work.

Finally, the court below apparently interpreted Section 8 (c) as covering utterances which contain more than bare inducements and are accompanied by discursive argument

(R. 330-331). This interpretation is based apparently upon the language of the Senate Report indicating that Section 8 (c) was intended to adopt the rule announced by this Court in *Thomas v. Collins*, 323 U.S. 516. It should be noted that the picket sign carried by Patterson stated merely that "This job is unfair to organized labor". The placard also carried the identifying number of the local union of the I.B.E.W. "501", of which Patterson was the business representative (R. 258). We believe that the measure of protection afforded by Section 8 (c) of the Act is not determined by the relative length of the opinion expressed by the party who becomes the subject of an unfair labor practice complaint. There was not contained in this expression any "threat of reprisal or force or promise of benefit" and it, therefore, should have been held immune under Section 8 (c) of the Act.

2. If Section 8 (b)(4)(A) of the Act was properly interpreted by the court below as applying to the facts of this case, it is our further contention that the enforcement of the order prohibiting peaceful picketing would probably be in conflict with applicable decisions of this Court under the First Amendment on the scope of the constitutional protection of peaceful picketing in labor disputes.

This Court has recently decided a number of cases which restrict the language of earlier decisions on picketing as free speech to the facts of such earlier decisions (*Teamsters v. Hanke*, Nos. 309 and 364 fn. 6, *Hughes v. California* No. 61, and *Building Service Employees International Union, Local 262 v. Gazzam*, No. 449, U.S. Sup. Ct. May 8, 1950).

The effect of these decisions is to permit the restraint of peaceful picketing which is intended to violate public policy as announced by state legislation, or even by a state court, in the absence of legislation. There is nothing in these

decisions, however, which reverses the holdings of the earlier cases.

Thus, it is stated in *Teamsters v. Hanke, supra,* that:

> "What was *actually decided* in *American Federation of Labor v. Swing, 312 U.S. 321, Bakery and Pastry Drivers and Helpers Local v. Wohl,* 315 U.S. 769, and *Cafeteria Employees Union v. Angelos,* 320 U.S. 293, does not preclude us from upholding Washington's power to make the choice of policy she has here made. In those cases we held only that a State could not proscribe picketing merely by setting artificial bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute." (Italics supplied.)

The continuing validity of the holding in the *Swing* case, *supra,* was further indicated by this Court in the *Gazzam* case, *supra,* as follows:

> "The state has not here, as in *Swing,* relied on the absence of an employer-employee relationship. Thus, the state has not as was the case there, excluded workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. 312 U.S. at 326."

These recent decisions of this Court do not establish the rule that all peaceful picketing is removed from the protection of the First Amendment. Question is, therefore, raised whether under the holdings on this point, the ruling of the court below applying Section 8 (b)(4)(A) to the facts of this case is violative of the First Amendment.

The court below, in its consideration of the constitutional issue of free speech, concluded that there was no

absolute protection of picketing as such (R. 331-332). This is not our contention.

We urge that the drawing of the line of permissible contest under the interpretation of Section 8 (b)(4)(A) by the court below is unreal in the light of the facts of this industry and, therefore, does not constitute a sufficient factor to balance the abridgement of freedom of expression in this case.

With respect to this latter point, the court below stated that "Congress, in the search for a compromise between the conflicting interests of employees in collective bargaining and that of *neutrals* in avoiding involvement in *quarrels not their own*, decided to draw a line at *secondary boycotts;* and the propriety of the decision is not for us" (R. 332). (Italics supplied.)

We respectfully submit that the court below assumed certain conclusions which are not consistent with the record or with decisions of this Court.

In *Carpenters and Joiners Union of America, Local No. 213 v. Ritter's Cafe* 315 U.S. 722, this Court in a five to four decision upheld a restraint on picketing under the State anti-trust statutes where building and construction unions picketed a cafe owned by Ritter because Ritter had let a contract for the construction of a building completely unrelated to the cafe, and one and one-half miles away from the cafe, to a contractor who employed non-union men.

The majority of this Court emphasized the fact that the prohibition was directed against a business (the cafe) wholly outside the economic context of the real dispute (at the building project) and distinguished the *Swing* case, *supra*, on the ground that there circumstances existed where there was an "interdependence of economic interest of all engaged in the same industry."

In the instant case, the facts do not raise a question of picketing an unrelated industry; the picketing was not only in the same industry but on the very job where the dispute had its *situs*. Furthermore, the interdependence of economic interest was a substantial factor not only in the electrical contracting industry but also for the employees on the particular job. Non-union rates on the dwelling house at Greenwich, Connecticut were of direct interest to electricians in the area; they were also of direct interest to the carpenters and other union trades working on the dwelling house, for it is a commonplace that non-union rates in one craft or trade have a necessary downward effect on the rates paid to other crafts or trades in the same construction job.

The importance of this interdependence of employee self interest has been given constitutional recognition by this Court in the *Swing* case, *supra*. There a judgment holding that an injunction should issue against the picketing of a beauty shop by a stranger union which did not have an employer-employee relationship with the shop, was reversed on the following grounds: "A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become commonplace. *American Foundries v. Tri-City Council*, 257 U. S. 184, 209. The right of free competition cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be based because of concern for the economic interest against which they are seeking to enlist public opinion than could the

utterance in *Thornhill's* case." *Ibid.*, 312 U. S. 321, 326. See *Cafeteria Employees Union v. Angelos*, 320 U. S. 292.

In the instant case, a reading has been given to Section 8 (b)(4)(A) of the statute as meaning literally that picketing is prohibited if it has the effect of requiring one employer to discontinue *any* business relationships he may have with *any other* person (R. 327). We have contended, *supra*, this was not the intent of the Congress. We respectfully submit that, if it is, then the Congress has drawn a line of permissible contest which is as arbitrary as the line struck down by this Court in the *Swing* case.

We respectfully submit that the constitutional justification for the restraint of peaceful picketing can not be found in the arithmetic fact that more than one employer's economic interest is adversely affected by such picketing. Certain secondary business relationships may be protected against the consequences of peaceful picketing because the peaceful picketing adversely affects an innocent neutral to the dispute. We contend, however, that all secondary business relationships cannot justify abridgement of freedom of expression merely because they are secondary relationships.

In the instant case Giorgi, the general contractor, was not an innocent third party to the labor dispute. He caused it by employing non-union electricians (through Langer) on the work he had contracted.

The picketing did not occur at another establishment or in another industry. It occurred on the very job where the non-union electricians were employed and which the union deemed to be unfair.

Under these facts, it is our contention that the same considerations which lead to the conclusion that the labor activities in this case did not constitute a secondary boycott prohibited by Section 8 (b)(4)(A) also lead to the

conclusion that, if Congress intended the prohibition to apply, there is a violation of the freedoms of the individual which the First Amendment seeks to protect.

This is particularly true in the building and construction industry where there is always more than one employer on even the smallest job. Peaceful picketing for whatever reason, if successful, can always be construed as having been the effective agent in causing the termination of a literal "secondary" business relationship. The economic facts of this industry coupled with the broad phase "an object" in Section 8 (b)(4)(A), if interpreted literally and without relation to the intent of Congress as discussed *supra,* would mean that any strike or picketing for economic reasons or organizational objectives would be enjoinable because of its effect on the multiple employer relationships on the job. We believe that although the Congress intended to apply stringent restrictions to labor by means of the Act, it did not intend to go as far as prohibiting strikes or picketing for organizational or economic objectives (See Conference Report on the Act, 80th Cong. 1st Sess. H. Rep. No. 510 p. 43; 93 Cong. Record 3950). In this connection, we wish to urge that the intent of Congress was evidenced by the statements of the majority Congressmen in charge of the Bill; not by the minority which was seeking to convince the country of the utterly destructive effects of the proposed legislation. If it is held, however, that the Congress intended such a result, we contend the Act is violative of the First Amendment.

3. The instant case also raises the question of whether the jurisdiction of the National Labor Relations Board applies to an essentially local labor dispute with only the most remote, if any, effect upon commerce. This question is of substantial importance in the building trades industry because of the large number of small building construction

jobs similar to the construction job in the instant case. The Supreme Court has not ruled on the applicability of the Labor Management Relations Act or of the National Labor Relations Act to the building and construction industry because the Board has only recently asserted jurisdiction over this industry. During the entire period of the National Labor Relations Act the Board did not assert jurisdiction over the industry.

The court below based its conclusions that Patterson's act "did affect commerce" within the meaning of the Act upon the general status of Langer as well as the general status of Giorgi, in addition to the activities involved on the construction of the dwelling at Greenwich, Connecticut. We believe that this was error because there was no finding by the Board that the acts of Patterson on behalf of the local union were directed against any of Langer's activities off the Greenwich, Connecticut job. Indeed, the Board dismissed the complaint insofar as it alleged that the petitioners herein violated Section 8 (b)(4)(A) by threatening to induce or encourage employees or employers other than Nicholas Deltorto or Giorgi Construction Company to strike or refuse to perform service in order to force certain other employers to cease doing business with Samuel Langer (R. 298-299).

Thus the Board affirmatively found that there were no actions directed against Langer in any set of facts other than the facts of the particular construction job in question. This conclusion is made particularly clear by the statement of the Chairman of the Board who cast the deciding vote in favor of asserting jurisdiction, not upon the plenary power of the Board to act in the case but because "the very controversy before the Board arose out of an interstate transaction in which New York contractors

were engaged in the construction of a residence in the State of Connecticut" (R. 296).

We therefore contend that the question of commerce in this case must be confined to the activities on this job rather than the considerations relied on by the court below with respect to the general business of Langer and Giorgi.

The court below recognized that the interstate activities in this case were insignificant (R. 326). The court went on to rule, however, that "they were enough to satisfy the demands of the Act" (R. 326). We respectfully differ from the conclusions of the court below in this respect and contend that analysis of the actual facts in the record will show that the assertion of jurisdiction in this case would extend the Federal power to an area where the Congress did not intend to apply it.

Langer's contract for the performance of electrical work was in the total amount of $325 (R. 53). The total purchase price of the private dwelling house was $15,200 (R. 40). There is no direct evidence in the record as to the value of the materials which Langer was to make available for the job, but on the assumption of the Trial Examiner that the proportion of materials to the total cost of the electrical work was one-third of the contract price (R. 248, fn 12), the cost of the materials would have been approximately $110. The other evidence with respect to materials showed that approximately $1800 of masonry supplies was required for the job (R. 54). There was no evidence on the cost of lumber and whatever lumber was used on the job was secured from a lumber yard located in Connecticut (R. 126-129). The record shows that Langer had completed approximately 60% of the electrical work for which he had contracted (R. 248). There is no evidence in the record that the completed work did not include all the materials required for the performance of the electrical work nor

is there any evidence to show that if there were further materials required on the job that such materials had not already been delivered and allocated to the job.

The record is equally devoid of evidence to show that any further deliveries of masonry, materials or lumber were required for the job.

The entire stoppage on the job lasted for only a few days and there is no evidence to show that the stoppage had or could have had any effect on the flow of building materials to the place where the construction work was to be performed (R. 324).

Thus there was no evidence to support a finding that the picketing affected the flow of commerce. We contend that the facts that Langer had his official headquarters in New York and was performing a contract in Connecticut and that he had to go from New York to Connecticut in connection with this job did not in themselves supply the facts required to support an exercise of the federal power under the Act. This Court has held that original construction is not commerce. *Murphey v. Reed*, 335 U.S. 865. This ruling has rendered the Fair Labor Standards Act inapplicable to the building and construction industry except insofar as employees are involved in the ordering and receiving of materials from outside the state. If the residence of Langer outside the state of construction brings this case within the concept of interstate commerce, then the Fair Labor Standards Act should apply to any construction employee who crosses a state line to arrive at his place of work. It has been held, however, that a construction employee is not engaged in commerce even if he has worked on the particular job outside the state where he normally works and which is the residence of the employer. *Barbe v. Cummins Construction Co.*, 49 F. Supp. 168 (D.C. Md.) affirmed 138 F. (2d) 667 (4th Cir.). The

out of state residence of Giorgi is equally irrelevant to the determination of the question of commerce in this case.

We further contend that even if the record showed that Patterson's acts affected the flow of commerce there was nevertheless no basis for the assertion of federal jurisdiction under the *de minimis* doctrine which is applicable to the interpretation of the commerce provisions of the Labor Management Relations Act of 1947.

The question of what comes within the commerce clause and what falls without the clause is essentially a matter of making distinctions between degrees of difference. It is obvious that almost any economic or labor activity, no matter how local in nature, can be related to interstate commerce by a verbal chain of causation. If this were the rule of law, however, the status of our dual system of government and the substantive powers of the States would be the subject of mere lip service.

There must be a close and substantial relationship to commerce before the conclusion can be drawn that a labor dispute "affects commerce." No simple rule exists for making the determination. As stated by this court in dealing with a related problem of interpretation of the Fair Labor Standards Act:

> "The attempt to achieve a form of words that could avoid an exercise of judgment that a particular occupation is more in the nature of a local business than not, is merely to be content with formulas of illusory uncertainly . . . we cannot escape the duty of drawing lines." *10 East 40th Street Building, Inc. v. Callus.* 325 U.S. 578.

In cases where this court has sustained jurisdiction, under the Act, on the ground that the labor activities affected commerce, a study of their facts clearly shows there was present in each of these cases, the necessary close, and substantial relationship to interstate commerce. That

relationship made control of the activities in question necessary and appropriate in order to protect commerce from burdens and obstructions. As stated by this court in *N.L.R.B. v. Jones & Laughlin Steel Corporation*, 301 U.S. 1.

> "Although activities may be intra-state in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schecter Corporation v. U.S.—Undoubtedly, the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree.*" (Italics supplied.)

In *Santa Cruz Fruit Packing Company v. N.L.R.B.*, 303 U.S. 453, the source of the materials was local, but substantial sale of the product was made in interstate commerce.

In *Consolidated Edison Company v. N.L.R.B.*, 305 U.S. 197, although the source of the materials and production and distribution of its product was local, it nevertheless appeared that a substantial part of the company's product was supplied to instrumentalities of interstate commerce.

In *N.L.R.B. v. Fainblatt*, 306 U.S. 601, a local processor, received materials belonging to others, in interstate commerce and after processing, distributed the material back through interstate commerce in a continuous day-by-day inflow of shipment to and from his factory.

In *Mandeville Island Farms v. American Crystal Sugar Co.*, 334 U.S. 219, in an action brought under the Federal anti-trust act, a monopoly and conspiracy was shown to affect interstate commerce by an agreement among sugar beet refiners, who constituted the only available market for sugar beets grown in their locality, where the price to growers with whom they contracted was based on average net returns of all rather than the separate return of the purchasing refiner. The sugar was sold by the refiners directly in interstate commerce and once converted from beets into sugar started on interstate journeys to the tables of the nation.

The Court may also wish to take into account a decision by Federal District Judge Duncan in a civil suit for damages under Section 303 of the Act that the construction of a Coca-Cola bottling plant is not subject to the commerce provisions of the Act. *Mills v. Plumbers Union, supra.*[1]

Although the court below relied on the decision of this court in *Polish National Alliance v. N.L.R.B.*, 322 U. S.

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[1] Although the definition of commerce in the Anti-Trust Law differs somewhat from the definition of the Labor-Management Relations Act, 1947, the rulings of the courts under the former statute are of assistance in determining the legal weight to be assigned the factor of inflow of materials. The inapplicability of the Anti-Trust Laws to the electrical contracting industry on grounds of lack of commerce has been discussed in detail by Federal District Judge Yankwich in *U. S. v. San Francisco Electrical Contractors Association Inc., et al* (1944) 57 F. Supp. 57, (N. D. Calif.). " . . . the electrical contractor processes the electrical articles into a combination which he sells at a price, in which enters *as only one* of the elements, the price of the articles. When articles originating in interstate commerce thus become co-mingled in a locally completed process, *they are not* in the flow of commerce."

643, it gave no effect to the careful reservation of this court that:

> "The inter-relations of modern society have not wiped out state lines. It is not for us to make inroads upon our federal system either by indifference to its maintenance or excessive regard for the unifying forces of modern technology. Scholastic reasoning may prove that no activity is isolated within the boundaries of a single state, but that cannot justify absorption of legislative power by the United States over every activity."

Reference to the facts in that case—under the principle that the facts in a decision must be carefully reviewed in determining the scope of the language of the court, as announced in recent decisions of this court—shows that the insurance company had outstanding benefit certificates in the amount of nearly 160 million dollars, that its assets totaled approximately 30 millions dollars and that stoppage or disruption of the company's operations would have a substantial effect on commerce in terms of the flow of bills, notes and policies into and out of the state, the making of loans on policies in and out of the state, and the credit relationship of the company to interstate industries, railroads and public utilities. Obviously, no such set of facts is presented here.

The decision of this Court in *N.L.R.B. v. Jones and Laughlin Steel Corporation,* 301 U.S. 1, which is relied upon by the court below, involved the effect of the activities of one of the largest steel companies in the United States on commerce, and *N.L.R.B. v. Fainblatt,* 306 U.S. 601 also relied upon by the court below, involved a garment manufacturing company employing approximately 200 employees.

The court below relied upon a "commerce" decision of the U. S. Court of Appeals for the Tenth Circuit (*United*

Brotherhood v. Sperry, 170 Fed. 2nd 863, 867) but omitted any mention of a subsequent decision of the same Circuit Court of Appeals in a case more applicable to the instant case. *Groneman v. I.B.E.W. Local 354* 177 F. (2d) 995.

In the *United Brotherhood* case, decided November 2, 1948, the Tenth Circuit Court of Appeals held the "commerce" provisions of the Labor Management Relations Act of 1947 applicable to a product boycott directed against an interstate supplier of materials. In the *Groneman* case the same Court of Appeals drew a clear distinction between such a secondary boycott and picketing of a non-union electrical contractor on the job where it held that the *de minimis* doctrine prevented the application of the Act to an essentially local dispute. The labor dispute in the *Groneman* case arose out of the employment of a non-union electrical contractor and the court held that the picketing carried on by the I.B.E.W. local in that case did not affect commerce even though it assumed that the interruption of interstate commerce was to the extent of $6,000. The court stated that

> "In *Labor Board v. Fainblatt,* 306 U.S. 601, 607 the Supreme Court said that considering the Act in light of its purpose and circumstances in which it must be applied, it found 'no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce affected more than that to which courts would apply the maxim *de minimis.*'
>
> "Considered in the light most favorable to appellant, the impact of this labor dispute upon commerce, in any event, is so trifling and microscopic as to bring it within the above pronouncement by the Supreme Court and requires the application of the *de minimis* doctrine. For this reason, we think the court correctly concluded that the controversy fell outside the pur-

pose and provisions of the Act and that the court was without jurisdiction." (At pp. 997-998.)

We contend that if the opinion of the Tenth Circuit Court of Appeals is correct that the *de minimis* doctrine is applicable to a question of jurisdiction arising under the Labor Management Relations Act of 1947, the facts in this case are well within the scope of such doctrine. This court in the case of *Mabee v. White Plains Publishing Co.* 327 U.S. 178 cited with apparent approval the reference in the *Fainblatt* case to the *de minimis* doctrine in its application to the National Labor Relations Act as distinguished from the Fair Labor Standards Act.

We believe that the Tenth Circuit Court of Appeals was correct in applying the *de minimis* doctrine in the *Groneman case.* We also contend that regardless of the insubstantial differences in the facts as between the *Langer* and *Groneman* cases, there is a conflict between the Circuits in the failure of the U. S. Court of Appeals for the Second Circuit to apply the *de minimis* doctrine to the *Langer* case.

This Court has stated in the case of *United States v. Yellow Cab Company,* 332 U.S. 218, 231, that "interstate commerce is an intensely practical concept drawn from the normal and accepted course of business." The application of this view in terms of actual decisions is vital to the maintenance of our system of dual sovereignties. Application of the Labor Management Relations Act, 1947, to the essentially local dispute involved in the instant case represents a final step in the complete erosion of the concept that there is an area of economic activity which is reserved to the states. Certainly, the normal and accepted course of business does not admit of the view that the picketing of a small private dwelling house under the circumstances of this case, represents an act which has the

necessary substantial and intimate relationship to commerce which is required for the assertion of the federal power under this Act.

4. Petitioners are entitled to have a clear order on their duties, if it should be held that they have violated the Act, and to have the order based on appropriate findings.

The order as written is in conflict with Section 8 (b) (4)(A) of the Act which permits secondary boycotts where intended to force recognition of a certified union. If such a case were to arise, there would be no clear understanding of the scope of the order.

Furthermore, the order in this case is probably in conflict with rulings of this and other courts on "blanket" orders. There was no finding by the Board that the acts of petitioners on the Giorgi job will probably be applied on jobs of other employers. Indeed, the Board dismissed that part of the complaint which alleged that Local 501 and Patterson had threatened to induce or encourage employees of employers other than Deltorto or Giorgi to strike or refuse to perform services in order to force said other employers to cease doing business with Langer. Nevertheless, the order as formulated by the Board and approved by the court below requires petitioners to

> "cease and desist from inducing or encouraging the employees of Nicholas Deltorto, or *any employer*, by picketing or related conduct, to engage in a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Giorgi Construction Company, or *any other employer or person* to cease doing business with Samuel Langer" (R. 298, 336). (Italics supplied.)

See *N.L.R.B. v. Federal Engineering Co. Inc.* 155 F. (2d) 17 (6th Cir.); *May Department Stores Co. v. N.L.R.B.*, 326 U. S. 376.

CONCLUSION

The questions raised by the decision of the court below on sections of the Labor-Management Relations Act of 1947, which have not as yet been the subject of rulings by this court, are of vital importance to all of organized labor in the United States and, in particular, to the building and construction industry which employs approximately three million persons.

The destruction of traditional methods of organization in this and other industries betokens serious consequences to the labor organizations involved in these industries and to the conditions of labor of their membership.

The course of decision in this case shows the sharp conflict of opinion among the administrative officials and judges who have considered it. The Trial Examiner recommended dismissal of the case, the Board rejected his recommendations by a divided vote of three to two and the court below sustained the Board's action by a division of two to one.

It is respectfully submitted that the questions raised by the decision below merit final determination by this court and that this petition for a writ of certiorari should be granted.

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APPENDIX

The pertinent provisions of the National Labor Relations Act, as amended (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 et seq., as amended by the Act of June 23, 1947, Public Law 101, 80th Congress, 1st Session, 29 U. S. C., Supp., 151 et seq.) are as follows:

Sec. 2. When used in this Act—

* * * * * * *

"(6) The term 'commerce' means trade, traffic, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * * *

Section 8.

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"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services where an object thereof is: (A) forcing or requiring any employer or self-

employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representatives of such employees under the provisions of Section 9; * * *

* * * * * * *

"(c) The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * * * *

Section 10. "(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this

Act or has received a construction inconsistent therewith.

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"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

• • • • • • •

"(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4 (A), (B), and (C) of Section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is

filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint shall issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law; *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony; *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situa-

tions where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

* * * * * * *

Sec. 303. "(a) It shall be unlawful, for the purposes of this section only in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

"(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other persons;

"(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of of such employees under the provisions of section 9 of the National Labor Relations Act;

"(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

"(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such em-

ployer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representatives for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

Sec. 501. "When used in this Act—

"(1) The term 'industry affecting commerce' means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

"(2) The term 'strike' includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

"(3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' 'representative,' 'person,' and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."

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No. 108

In the Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court below (R. 323-332) is reported at 181 F. 2d 34. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 295-300, 241-284) are reported at 82 NLRB 1028.

JURISDICTION

The decree of the court below was entered on April 6, 1950 (R. 336-337). The petition for a writ of certiorari was filed on June 2, 1950. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U. S. C. 1254 (1).

STATUTE INVOLVED

The pertinent provisions of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141, *et seq.*), are set forth in the Appendix to the petition (pp. 45-50).

QUESTIONS PRESENTED

The Board found that petitioners conducted a secondary boycott in violation of Section 8 (b) (4) (A) of the Labor Management Relations Act by inducing and encouraging employees of Deltorto, a subcontractor, to engage in a strike or concerted refusal to perform services for their employer, an object thereof being to force Giorgi, the general contractor, to cease doing business with another subcontractor, Langer, both of whom have their principal place of business in New York. Petitioners induced or encouraged the boycott by picketing at the situs of a construction project at Greenwich, Connecticut, on which all three contractors were engaged, but at a time when only the employees of Deltorto were working. The questions presented are:

1. Whether the Board properly exercised jurisdiction over the unfair labor practice.

2. Whether the Board's finding that an object of the picketing was to force Giorgi to cease doing business with Langer is supported by substantial evidence.

3. Whether the secondary boycott was beyond the reach of Section 8 (b) (4) (A) because accomplished through peaceful picketing.

4. Whether the Board's order is proper on the unfair labor practice found.

STATEMENT

A. *The facts as found by the Board.*—Upon the usual proceedings under Section 10 of the National Labor Relations Act, as amended, the Board, on April 12, 1949, issued its findings of fact, conclusions of law, and order. The pertinent facts may be summarized as follows:[1]

Petitioner, International Brotherhood of Electrical Workers, Local 501, A. F. of L. (hereinafter referred to as the IBEW) is a labor organization, which has its principal office at Mt. Vernon, New York, and is engaged in promoting and protecting the interests of its members (R. 254; 6, 11). Its business representative or agent is petitioner William Patterson (R. 254; 7, 11).

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[1] In the following statement record references which precede the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

Prior to the events which gave rise to the instant proceedings, the IBEW had become involved in a dispute with Samuel Langer, an electrical contractor whose place of business is in Port Chester, New York (R. 256, n. 32; 92-93), because he was operating as a non-union employer. Langer's business consists of the installation of electrical wiring fixtures, and equipment for light and power in new construction, including homes, commercial holdings, and industrial plants, maintenance of electrical equipment in industrial plants, and miscellaneous installation, repair, and replacement of electrical fixtures and equipment (R. 248; 56-57). Langer's total business from July 1, 1947 to July 1, 1948, the period pertinent to these proceedings, amounted to about $24,443 (R. 248; 57).

During that period Langer purchased about $8,095 worth of materials (R. 248; 61), of which about $5,095 worth were secured by Langer from points outside the State of New York (R. 248; 61). During the same period, Langer performed work outside New York, all of it on jobs in Connecticut, valued at about $8,402 (R. 248-249; 61). Materials for those Connecticut jobs, one of which was the house here involved, were transported by Langer from his Port Chester shop to Connecticut sites (R. 249; 61-62). Langer estimated that the value of the material thus transported from New York to Connecticut was approximately $2,700 (R. 249; 62).

In December 1947, Giorgi Construction Company, a partnership having its place of business at Port Chester, New York, entered into a general contract for the construction of a private dwelling house in Greenwich, Connecticut (R. 245-246; 39-40). The contract price of the house was $15,200 (*ibid.*). The construction of the house was begun in the middle of December 1947 (*ibid.*). Giorgi performed part of the work, for the most part masonry work, with his own employees (*ibid.*). In the construction of the house, Giorgi used various masonry materials valued at approximately $1,800 (R. 246; 54). These materials were purchased by Giorgi from a New York concern which delivered the materials from Port Chester, New York, to the construction site in Connecticut (R. 246; 42).

Giorgi subcontracted the electrical work on the house to Langer (R. 247; 40-41),[2] and subcontracted the carpentry work to one Nicholas Deltorto, a carpenter contractor (R. 247; 41). By the middle of April 1948, Langer's two electricians, neither of whom was a member of the IBEW (R. 256; 77), had completed the roughing-in part of the electrical work on the house (R. 256; 77).

After Langer's electricians had completed the roughing stage of the electrical work, which must

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[2] The contract price, covering all the electrical work to be done on the house, was $325 (R. 247; 53).

be done before the walls of the house can be finished, petitioner Patterson, the IBEW's business representative, visited the Greenwich house (R. 257; 160-161). He talked with Nicholas Deltorto, whose two carpenter employees, Ralph Ciancia and Angelo Bova, both members of the Carpenters union, were the only men then at work on the job (R. 257; 159-161). Patterson told Deltorto that the electrical work was being done by a non-union contractor (*ibid.*). Deltorto stated that he did not know who was doing the electrical work (*ibid.*). Patterson then asked Ciancia, one of the carpenters, if he knew that the job was non-union (R. 257; 177-178). Ciancia replied that he did not know that there were non-union men on the job (*ibid.*).

On April 16, Patterson again visited the Greenwich house when Deltorto, Ciancia, and Bova were the only ones present (R. 258; 161). Ciancia and Bova were working together on a scaffold at the time (R. 258; 183). Patterson talked only with Deltorto, but Bova, at least, overheard some of the conversation (R. 258; 183). Patterson, in substance, told Deltorto that the job was unfair because the electrical work was being done by a non-union organization (R. 258; 162). Deltorto again replied that he "didn't know about that" (*ibid.*). Patterson commented that he "was sorry," and within 5 minutes, began to picket the house with a placard which read, "This job is unfair to organized labor; IBEW 501 AFL" (R. 258; 162).

When Bova noticed Patterson with the placard, he suggested to his fellow carpenter Ciancia that they get down off the scaffold to "see what it's all about" (R. 258-259; 183). After they had read the legend on the placard, Bova said that he did not know what to do. Ciancia stated, "There's only one thing to do. Let's go home" (*ibid.*). Thereupon, the two employees informed Deltorto that they were stopping work (R. 258-259; 162, 180, 183). All three then left the construction site (*ibid.*). Thereafter Deltorto informed the general contractor, Giorgi, that "his carpenters had walked off the job because the electrical delegate had picketed the job" (R. 259; 44). Giorgi replied that he would have the matter "straightened out" (R. 259; 165).

That night Patterson notified Giorgi that Langer was "unfair" and that he "would have to replace Samuel Langer with a union contractor in order to complete the job," and that if Giorgi did not replace Langer he "would probably not receive any skilled trades to finish the rest of the work" (R. 259; 46-47).

On April 17, Giorgi notified Langer of what had happened and informed him that in order for Giorgi to finish the house and get his money, Giorgi would have to obtain a union electrical subcontractor to do the rest of the electrical work (R. 259; 46, 77-78). Langer agreed to release Giorgi from his contract stating that he would step aside so that a union

contractor could take over (*ibid.*). Thereafter, Langer performed no further work on the Greenwich house and Giorgi made arrangements with a union electrical subcontractor to finish the electrical work (R. 259-260; 48). Several days later Giorgi informed Deltorto that the trouble on the Greenwich house had been "straightened out" (R. 259-260; 165). Thereupon, Deltorto's carpenters returned to work on that project (*ibid.*).

B. *The Board's conclusions.*—The Board found that both Langer and Giorgi were engaged in commerce within the meaning of the Act and that petitioners' conduct herein affected commerce within the meaning of the Act (R. 245-249, 296).[3] The Board found that petitioners, by picketing the construction job here involved, induced or encouraged the employees of Deltorto, a subcontractor of Giorgi, the general contractor, to engage in a strike or concerted refusal in the course of their employment to perform services for Deltorto, an object thereof being to force or require Giorgi to cease doing business with Langer, another subcontractor on the same construction job (R. 297). The Board, reversing the trial examiner, held that the picket-

[3] The Board declared (R. 296) that it would assert jurisdiction here "for the reasons stated in the majority opinion in the *Watson* case" (*Local 74, United Brotherhood of Carpenters, et al.* v. *National Labor Relations Board*, petition for certiorari pending, No. 85, this Term). The two dissenting members of the Board stated that, because the case involved "an essentially local enterprise with only the most remote effect upon commerce," they would, as a discretionary matter, refuse to assert jurisdiction (R. 299).

ing herein was not exempted from the reach of Section 8 (b) (4) (A) by Section 8 (c). The Board said (R. 297): "Section 8 (b) (4) (A) prohibits peaceful picketing, as well as other means of inducement or encouragement, in furtherance of an objective proscribed therein, and * * * Section 8 (c) does not immunize such conduct."[4] Accordingly, the Board concluded that petitioners' conduct was in violation of Section 8 (b) (4) (A) of the Act (*ibid.*).

C. *The Board's order.*—The Board ordered petitioners to cease and desist from inducing or encouraging the employees of Deltorto or any employer, by picketing or related conduct, to engage in a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Giorgi Construction Company or any other employer or person to cease doing business with Langer (R. 297-298). The order also requires petitioners to post the customary notices of compliance (R. 298).

D. *The proceedings in the Court of Appeals.*—On May 16, 1949, petitioners filed in the court below a petition to review and set aside the Board's order

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[4] The Board adopted by reference (R. 297, n. 5) the reasoning set forth in its earlier opinion in *Wadsworth Bldg. Co., Inc., and Klassen & Hodgson, Inc.*, 81 NLRB 802, 807-816, holding in substance that peaceful picketing which contained no threat or force or promise of benefit, violated Section 8 (b) (4) (A) when it amounted to inducement or encouragement within Section 8 (b) (4) (A) of the Act, and was not rendered lawful by Section 8 (c).

(R. 301-310). On February 24, 1950, the court below handed down its opinion (R. 323-335) and on April 6, 1950, entered its decree (R. 336-337) enforcing the Board's order. Judge Clark dissented (R. 332).

ARGUMENT

1. Petitioners' contention (Pet. 33-43) that the Board was without jurisdiction over the unfair labor practice here found because the construction project at which the picketing occurred was an essentially local enterprise raises no substantial question warranting review. The unfair labor practice consisted of a secondary boycott against Giorgi, an object of which was to force Giorgi to cease doing business with Langer. The facts set forth in the Statement, pp. 4-5, *supra*, show, as the Board (R. 296, 245-254) and the court below found (R. 325-326), that both Langer and Giorgi were engaged generally in commerce within the meaning of the Act, and that petitioners' conduct affected such commerce. Indeed the construction project itself was interstate in character, being performed by New York contractors at a Connecticut site (R. 296). Petitioners' argument that the restraint upon commerce resulting from its boycott of Langer must be measured solely by the impact of the picketing at the particular project here involved (Pet. 34-35) was rejected by the Board for the same reason that it rejected the identical argument (R. 296) in *Local 74, United Brother-*

hood of Carpenters, et al., and Ira A. Watson Co., 80 NLRB 533, enforced *sub nom., Local 74, United Brotherhood of Carpenters, et al.* v. *National Labor Relations Board*, (C. A. 6), April 4, 1950, pending on petition for certiorari, No. 85, this Term. Here, as in the *Watson* case, it may reasonably be anticipated that petitioners' boycott of Langer may be extended to other enterprises which do business with Langer and may result in substantial curtailment of Langer's interstate business. See Brief for the National Labor Relations Board in Opposition, No. 85, this Term, pp. 10-14.[5]

2. Petitioners contend (Pet. 15-17) that the real purpose of their picketing was to eliminate the employment of non-union men on the construction project, a condition which Giorgi had created by permitting Langer to bring non-union electricians onto the project, and that, consequently, substantial evidence is lacking to support the Board's finding, sustained by the court below, that an object of

[5] Petitioners' claim (Pet. 40-42), that the decision below conflicts with the holding of the Court of Appeals for the Tenth Circuit in *Groneman* v. *IBEW, Local 354*, 177 F. 2d 995, with respect to application of the *de minimis* doctrine overlooks the fact that in the *Groneman* case there was no finding that the boycott might extend beyond the local project there involved. The court in the *Groneman* case, 177 F. 2d, at 997, expressly reaffirmed its prior holdings in *United Brotherhood of Carpenters & Joiners of America* v. *Sperry*, 170 F. 2d 863, and *Slater* v. *Denver Bldg. & Construction Trades Council*, 175 F. 2d 608, which are in accord with the decision below on this point. Moreover, unlike the instant case, pp. 4-5, *supra*, the contractor involved in the *Groneman* case, as the court noted, was "operating a purely local business in no wise connected with anyone engaged in commerce" (*ibid.*).

the picketing was to force Giorgi to cease doing business with Langer. But the sufficiency of the evidence to support a Board finding is normally not a question warranting review by this Court. In any event, the record shows, as the Board and the court below found (R. 297, 326-328), that the picketing was not merely a protest against employment of non-union men but that it had as "an object * * * forcing or requiring Giorgi * * * to cease doing business with * * * Langer." The facts set out in the Statement show that the picketing took place at a time when Deltorto's union carpenters were at work, but when Langer's non-union electricians were not (R. 257, 297; 159-161); that after the carpenters had "walked off the job" because of the picketing, petitioner Patterson told Giorgi that Langer was "unfair," that Giorgi "would have to replace Samuel Langer with a union contractor in order to complete the job," and that if he did not do so, he "would probably not receive any skilled trades to finish the rest of the work" (R. 259; 46-47). That the picketing may also have had other objects (Pet. 15-16) is irrelevant under the very terms of Section 8 (b) (4) (A) (Appendix to petition, pp. 45-46). *Local 74, United Brotherhood of Carpenters, et al.* v. *National Labor Relations Board,* decided April 4, 1950 (C. A. 6), pending on petition for certiorari, No. 85, this Term; *National Labor Relations Board* v. *Wine, Liquor and Distillery Workers Union, Local 1, Etc., A. F. of L.*, 178 F. 2d 584, 586 (C. A.

2); *Shore* v. *Building & Construction Trades Council of Pittsburgh*, 173 F. 2d 678, 681-682 (C. A. 3). There are no contrary holdings.

Petitioners' further contention (Pet. 13-15, 17-19), that the mere circumstance that Langer was a subcontractor of Giorgi and was engaged on a common construction project with him establishes that Giorgi was not "doing business with" Langer, within the meaning of Section 8 (b) (4) (A), presents no substantial question warranting review. As the court observed (R. 327), "The phrase, 'doing business,' would ordinarily cover doing any business which the third party is free to discontinue, regardless of whether he is merely supplying materials to the employer, or has subcontracted with him to perform part of a work which the third party has himself contracted to do. . . . The phrase, 'cease doing business,' is general and admits of no such evasion," as petitioners suggest.[6]

[6] The cases cited by petitioners (Pet. 17-19) are not in point. *Mills* v. *United Association of Journeymen and Apprentices, et al.*, 83 F. Supp. 240 (W. D. Mo.) turned upon a point of jurisdiction (*id.*, 245-246), and the discussion of the phrase "cease doing business" therein was merely dictum (*id.*, 244-245). *Douds* v. *Metropolitan Federation of Architects*, 75 F. Supp. 672 (S.D. N.Y.), as the court below noted (R. 328), covers the situation, not presented here, "where the supposititious third person was only a disguise for the employer." Cf. *National Labor Relations Board* v. *Wine, Liquor & Distillery Workers Union, Local 1, etc., A. F. of L.*, 178 F. 2d 584-587 (C. A. 2). *Jennings* v. *Vincent's Admx.*, 284 Ky. 614, 145 S. W. 2d 537, relating to the contingent liability of general contractors under a state workmen's compensation law, is inapposite. The very purpose of such legislation is to obliterate the generally recognized legal distinction between participants in a common project, which might otherwise be

Petitioner's claim, for which no support in the language of the Act or the legislative history is shown (Pet. 10-11, 14-17, 19, 30-33), that Section 8 (b) (4) (A) is without application to contractor-subcontractor relationships in the construction industry, is entirely without substance. See Brief for the National Labor Relations Board in Opposition, No. 85, this Term, pp. 12-13.

This case does not present the problem, posed by petitioners, of distinguishing between an "object" and a mere incidental effect of picketing, where picketing of a subcontractor and his employees, with whom the Union is engaged in a labor dispute, is carried on at a construction site at which other contractors are also engaged. Cf. *Pure Oil Co.*, 84 NLRB 315; *Ryan Construction Corp.*, 85 NLRB, No. 76. The Board and the court below held (R. 297, 327), as the evidence shows, that the picketing in this case was directed not against Langer and his employees with whom the Union was engaged in a labor dispute, but against Deltorto and his employees, who alone were present when the picketing began, and through them against Giorgi. There is consequently no basis for petitioners' claim that the holding in this case impinges

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applied to deprive a subcontractor's employees of an effective remedy in cases of injury. *Hill* v. *American Surety Co.*, 200 U. S. 197 (Pet. 19), interpreting legislation to guarantee payment to persons who supply materials or labor for public construction projects, is indistinguishable, in principle, from the *Jennings* case.

upon legitimate organizational picketing in the construction industry.

3. Petitioners' contention (Pet. 19-28) that Section 8 (c) of the Act[7] must be read as exempting from Section 8 (b) (4) (A) the peaceful picketing here involved, which was designed to "induce or encourage" employees to engage in a secondary boycott, presents no question warranting review. The plain language of Section 8 (b) (4) (A) makes it an unfair labor practice for a labor organization to "induce or encourage" employees to engage in secondary strikes; the words "induce" and "encourage" on their face comprehend every form of influence and persuasion designed to achieve the forbidden objective. The legislative history of Section 8 (b) (4) (A) likewise demonstrates beyond question that Congress in that Section intended to reach, and fully understood that it was reaching, peaceful picketing and all other verbal means whereby labor organizations instigated secondary boycotts. In the course of debate on the bill, both proponents and opponents of the Section made it clear that the effect of the Section would be to make it unlawful for labor organizations to "incite" or "encourage" employees to engage in sec-

[7] Section 8 (c) provides that:

"The expressing of any views, argument or opinion, or the dissemination thereof, whether in printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

ondary strikes, whether by "appealing" to their sympathy, or by using other peaceful means of persuasion.[8] As the Board pointed out (*Wadsworth Bldg. Company, Inc., and K'assen & Hodgson, Inc.*, 81 NLRB 802, 812),

> It was Congress' belief that labor disputes should be confined to the business immediately involved and that unions should be prohibited from extending them to other employers by inducing and encouraging the latters' employees to exer economic pressure in support of their disputes. It was the *objective* of the unions' secondary activities, as legislative history shows, and not the *quality of the means* employed to accomplish that objective, which was the dominant factor motivating Congress in enacting that provision.

This view of the scope and purpose of Section 8 (b) (4) (A) has been adopted not only by the court below but also by the other courts of appeals which have considered the question. *Printing Specialties & Paper Converters Union, Local 388* v. *LeBaron*, 171 F. 2d 331, 334 (C. A. 9); *United Brotherhood of Carpenters and Joiners of America* v. *Sperry*, 170 F. 2d 863, 868-869 (C. A. 10).

Section 8 (c) of the Act was designed broadly to insure that utterances which amounted to no more

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[8] See *e.g.*, statements, in the course of debate on the proposed Act, of Senator Taft, 93 Cong. Rec. 4198-4199, 4867; Senator Pepper, 93 Cong. Rec. 4197-4200; and Senator Murray, 93 Cong. Rec. 4844. See also Minority Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 105, 80th Cong., 1st Sess., p. 19.

than expression of views, arguments, or opinion concerning the merits of labor controversies would not be deemed to constitute or be evidence of unfair labor practices. See Briefs for the National Labor Relations Board in Opposition in Nos. 701, Oct. Term, 1949, and 51, this Term. It was not intended or understood by Congress to apply to incitement to commit acts which Congress desired to discourage, incitement which was specifically branded an unfair labor practice. Nowhere in the course of debate on the bill, so far as we have been able to discover, was it even suggested that Section 8 (c) impinged upon Section 8 (b) (4) (A), or that conduct which fell within the literal terms of that Section would be preserved from illegality by Section 8 (c).[9] Since, as the Board noted in the *Wadsworth* case, the reading of Section 8 (c) urged by petitioner would in large measure vitiate Section 8 (b) (4) (A) by exempting from its scope numerous and traditional methods of inciting and inducing secondary boycotts, the absence of evidence in the legislative history to indicate that this was Congress' intention is persuasive that such a reading would do violence to the scheme of the Act and the

[9] It is significant that the House Bill, H. R. 3020, which contained the predecessor provision to Section 8 (c), (Section 8 (d) (1)), also contained a provision (Section 12(a)(2)) specifically prohibiting as an "unlawful concerted activity," picketing of an establishment where there was no dispute between the employer and his employees. The House obviously did not consider this provision incompatible with the type of protection accorded the expression of views or opinion by Section 8 (c).

purpose of Congress. Cf. *United States* v. *American Trucking Associations*, 310 U. S. 534, 542-544; *Chicago & Southern Air Lines* v. *Waterman Steamship Corp.*, 333 U. S. 103; *Harrison* v. *Northern ·st Co.*, 317 U. S. 476, 479.

The sole basis for petitioners' claim that Section 8 (c) exempts inducement or encouragement to engage in a secondary boycott unless accompanied by threats of reprisal or promise of benefit, is the fact that Section 8 (c) shields the utterances which it protects from being considered unfair labor practices under "any of the provisions of this Act," and the fact that Congress intended the guarantees of that Section to be applicable equally to labor organizations and to employers. But, as we have indicated above, Section 8 (c) was not designed to comprehend utterances which, *qua* incitement to commit prohibited acts, are themselves condemned as unfair labor practices by the statute. Incitement to commit acts in contravention of the policy of the statute is not protected by Section 8 (c) whether undertaken by labor organizations or by employers. Thus, it could hardly be argued successfully that Section 8 (c) would protect an employer who incited employees, though without threats or promise of benefit, to commit an assault upon a union organizer or upon union members. Cf. *National Labor Relations Board* v. *New Era Die Co.*, 118 F. 2d 500, 504 (C. A. 3); *National Labor Relations Board* v. *Goodyear Tire & Rubber Co.*,

129 F. 2d 661, 664 (C. A. 5); *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 F. 2d 331, 335 (C. A. 6); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. 2d 780, 792 (C. A. 9), certiorari denied, 312 U. S. 678. In a case decided after the amended Act the Court of Appeals for the Sixth Circuit held that an employer violated the Act by "soliciting" various citizens committees "through the dissemination of anti-union propaganda" to commit acts impinging on employee organizational rights and enforced a Board order prohibiting the employer from engaging in such conduct in the future. *National Labor Relations Board* v. *Salant & Salant, Inc.* (C. A. 6), decided June 2, 1950, enforcing 66 NLRB 24, 44, 111. Since the verbal conduct here involved was found to violate the Act not because it constituted an expression of views, argument or opinion, but because it constituted incitement or encouragement specifically condemned by the Act, Section 8 (c) is without application in this case. And, since employer incitement of prohibited acts is likewise not protected, it cannot be argued that the holding of the Board and the court below fails to give effect to the Congressional objective that Section 8 (c) should apply equally to utterances of labor organizations and employers. There is no conflict of decisions and none is claimed.

Petitioners' further claim (Pet. 28-33), that Section 8 (b) (4) (A), as here applied, invades

rights guaranteed by the First Amendment, is refuted by controlling decisions of this Court. *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 502-504; *International Brotherhood of Teamsters, et al.* v. *Hanke*, Nos. 309, 364, Oct. Term, 1949; *Building Service Employees International Union* v. *Gazzam*, No. 449, Oct. Term, 1949; *Hughes, et al.* v. *Superior Court of California*, No. 61, Oct. Term, 1949.

4. Petitioners' contention (Pet. 43) that the Board's order, upon the unfair labor practices found, is improper because it is too broad and conflicts with Section 8 (b) (4) (B), which permits secondary boycotts where intended to force recognition of a certified union (Pet. 46), presents no substantial question warranting review by this Court. The order (R. 297-298) does no more than enjoin petitioners from exerting the same kind of economic pressure against Langer through other employers as they exerted upon Langer through Giorgi and Deltorto in the instant case. The order thus plainly falls within the scope of the Board's authority, recognized by this Court, to prohibit other violations which resemble "that which [the offending party] has committed. . . ." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 437; *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, 392. Obviously, the order is not to be read so as to proscribe conduct which Section 8 (b) (4) (B) permits.

CONCLUSION

The decision below, sustaining the Board's findings and order, is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

In the Supreme Court of the United States

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SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

This memorandum is filed by the Solicitor General, on behalf of the National Labor Relations Board, for the purpose of modifying the position previously taken in the Brief for the National Labor Relations Board in Opposition to the Petition for a Writ of Certiorari in the above-captioned case.

After the filing of the petition for a writ of certiorari herein and the Government's opposition thereto, the Court of Appeals for the District of Columbia Circuit on September 1, 1950, handed down its decision in *Denver Building and Construction Trades Council, et al.* v. *National Labor Relations Board,* not yet officially reported, holding that it is not an unfair labor practice

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within the meaning of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended, for a labor organization to engage in, and induce or encourage all the employees on a building job to engage in, a strike or concerted refusal to perform services in the course of their employment with an object of forcing or requiring the general contractor to terminate the services of a subcontractor on the job because the subcontractor employs non-union workers. We believe that the decision of the District of Columbia Circuit in this respect is in conflict with the decision of the court below in the instant case and is also in conflict with the decision of the Court of Appeals for the Sixth Circuit in *National Labor Relations Board* v. *Local 74, United Brotherhood of Carpenters and Joiners of America,* pending on petition for a writ of certiorari, No. 85, this Term.[1] Because of the conflict and the importance of the question in the administration of the Act, the Government intends to petition for a writ of certiorari to review the decision of the Court of Appeals for the District of Columbia Circuit in the *Denver* case.

Under the circumstances, the Government believes that this Court should review the question as to which the conflict has arisen in the instant case as well as in the *Denver* case. For this

[1] We have also filed a memorandum in No. 85 modifying, as in this case, our position with respect to the granting of a writ of certiorari.

reason, we do not now oppose the granting of a writ of certiorari to review petitioner's question number 1, namely, "Whether the picketing in this case constituted a secondary boycott in violation of Section 8 (b) (4) (A) of the Act." As to all other questions urged in the petition, it continues to be the Government's position that certiorari should be denied.

Respectfully submitted,

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SEPTEMBER 1950.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

SUPPLEMENTAL MEMORANDUM FOR THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

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Petitioners having received the Supplemental Memorandum for the National Labor Relations Board, continue their prayer for the grant of their petition for a writ of certiorari on each of the questions raised in such petition.

Petitioners also desire to call to the attention of the Court the National Labor Relations Board ruling of October 6, 1950 on its jurisdiction. There

follows a quotation from the Board's release on this subject:

"The plan that emerged from the eight decisions made it clear that whenever federal jurisdiction exists under the statute and the interstate commerce clause of the Constitution, the Board will exercise jurisdiction over:

"1. Instrumentalities and channels of interstate and foreign commerce (for example, radio systems).

"2. Public utility and transit systems.

"3. Establishments which operate as integral parts of a multi-state enterprise (for example, chain stores, and branch divisions of national or interstate organizations).

"4. Enterprises which produce or handle goods destined for out-of-state shipment, or performing services outside a state, if the goods or services are valued at $25,000 a year.

"5. Enterprises which furnish services or materials necessary to the operation of enterprises falling into categories 1, 2 and 4 above, provided such goods or services are valued at $50,000 a year.

"6. Any other enterprise which has:

(a) a direct inflow of material valued at $500,000 a year; or

(b) an indirect inflow of material valued at $1,000,000 a year; or

(c) a combination inflow or outflow of goods which add up to at least a

total of '100 per cent' of the amounts required in items 4, 5, 6 (a) and (b) above.

"7. Establishments substantially affecting national defense."

Under this plan, the Board would not have accepted jurisdiction in the instant case since Langer's annual business was less than $25,000 a year (R. 248) and his out of state business was less than $8,500 (R. 61). It is true that the Board's plan on jurisdiction is based on its exercise of administrative power but it is submitted that the theories underlying legal and administrative determinations on commerce are similar since both are dependent on the exercise of practical judgment.

It should also be noted that the Board's effort to distinguish the instant case from the *Groneman* case (177 Fed. 2d 995) implies that there was a finding in the instant case that the boycott might extend beyond the local project (NLRB Br. p. 11 fn. 5). No such finding was made by the Board. Indeed, the Board dismissed the allegations in the complaint alleging similar violations with respect to other jobs (R. 298-299). Compare Board's brief in opposition in No. 86 page 9.

It is also submitted that the statutory interpretation of section 8 (b) (4) (A) necessarily involves the scope of section 8 (c) and that section 8 (c) cannot be considered without reference to the con-

stitutional question raised with respect to the First Amendment.

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 108

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 323-332) is reported at 181 F. 2d 34. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 295-300, 241-284) are reported at 82 NLRB 1028.

JURISDICTION

The decision of the court below was issued on February 24, 1950, and its decree enforcing the

Board's order was entered on April 6, 1950 (R. 323, 336-337). The petition for a writ of certiorari was filed on June 2, 1950, and was granted on December 11, 1950. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

The Board found that petitioners conducted a secondary boycott in violation of Section 8 (b) (4) (A) of the Labor Management Relations Act by inducing and encouraging employees of Deltorto, a subcontractor, to engage in a strike or concerted refusal to perform services for their employer, an object thereof being to force Giorgi, the general contractor, to cease doing business with another subcontractor, Langer, both of whom have their principal place of business in New York. Petitioners' primary dispute was with Langer, a nonunion contractor. Petitioners induced or encouraged the boycott by picketing at the situs of a construction project at Greenwich, Connecticut, on which all three contractors were engaged, but at a time when only the employees of Deltorto were working. The questions presented are:

1. Whether the unfair labor practices found affect commerce within the meaning of the Act.

2. Whether the action of petitioners constituted an exertion of secondary pressure forbidden by Section 8 (b) (4) (A).

3. Whether picketing to induce secondary pressure is an expression of "views, argument, or opinion" protected by Section 8 (*c*) of the Act.

4. Whether prohibition of such picketing is an unconstitutional abridgment of free speech.

5. Whether the Board's order is unduly broad.

STATUTE INVOLVED

The pertinent provisions of the Labor Management Relations Act, 1947, (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), are set forth in the Appendix to petitioners' brief, pp. 108-115.

STATEMENT

Upon the usual proceedings under Section 10 of the Act, the Board, on April 12, 1949, issued its findings of fact, conclusions of law, and order (R. 295-300, 240-284). The pertinent facts may be summarized as follows:[1]

I. The Board's Findings of Fact

A. The Commerce Data

In December 1947, Giorgi Construction Company, a partnership having its place of business at Port Chester, New York, entered into a general contract for the construction of a private dwelling house in Greenwich, Connecticut (R. 245-246; 39-40). The contract price of the house was $15,000 (*ibid.*). Giorgi performed part of the work for the

[1] In the following statement record references which precede the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

most part masonry work, with his own employees (*ibid.*). Giorgi subcontracted the electrical work on the house to Samuel Langer, an electrical contractor whose place of business is in Port Chester, New York (R. 247; 40-41, 56), and subcontracted the carpentry work to Nicholas Deltorto, a carpenter contractor also located at Port Chester (R. 247; 41).

In the construction of the house, Giorgi used various masonry materials valued at approximately $1,800 (R. 246; 54). These materials were purchased by Giorgi from a New York concern, F. C. Mertz & Son, which delivered the materials from Port Chester, New York, to the construction site in Connecticut (R. 246; 42). As a "top" purchaser of Mertz, Giorgi bought about $15,000 worth of masonry material from him in 1947, which Giorgi utilized to fulfill construction contracts totalling some $60,000 in 1947 (R. 246; 38-39, 133), Mertz himself, in 1947, purchased materials valued at $290,000, of which 30 percent was extra-state in origin, and sold $375,000 worth of material, of which 15 percent was to customers outside New York State (R. 246; 131-132).

In fulfillment of his $7,400 subcontract, Deltorto, the carpenter contractor, purchased materials from Interstate Lumber and Mill Corporation, a Connecticut firm, and these materials comprised part of Deltorto's annual purchases of nine to ten thousand dollars from Interstate (R. 247;

160, 126-127). Interstate in turn, in 1947, purchased $700,000 worth of material, such as lumber and millwork, of which 90 percent was secured from sources outside Connecticut, and 15 to 20 percent of Interstate's sales were made to customers in New York (R. 247; 126-129).

As to Langer, the electrical subcontractor, his subcontract for electrical work on the house was $325 (R. 247; 53). Langer's business in general consists of the installation of electrical wiring fixtures, and equipment for light and power, in new construction, including homes, commercial holdings, and industrial plants; maintenance of electrical equipment in industrial plants; and miscellaneous installation, repair, and replacement of electrical fixtures and equipment (R. 248; 56-57). Langer's total business from July 1, 1947 to July 1, 1948, the period pertinent to these proceedings, amounted to about $24,443 (R. 248; 57). Langer estimated that the total cost of the various new construction jobs on which he did electrical work in 1947 was about $650,000, and that the cost of the materials on these jobs was about $260,000 (R. 248, n. 13; 58-60).

During the period between July 1, 1947 and July 1, 1948, Langer purchased about $8,095 worth of materials (R. 248; 61), of which about $5,095 worth were secured by Langer from points outside the State of New York (R. 248; 61). During the same period, Langer performed work outside New

York, all of it on jobs in Connecticut, valued at about $8,402 (R. 248-249; 61). Materials for those Connecticut jobs, one of which was the house here involved, were transported by Langer from his Port Chester shop to Connecticut sites (R. 249; 61-62). Langer estimated that the value of the material thus transported from New York to Connecticut was approximately $2,700 (R. 249; 62).

In 1947, of the two wholesale electrical suppliers from whom Langer bought his material, Mar Le Company, a Connecticut firm, bought 90 percent of its $600,000 purchases from extra-state sources, and 25 percent of its $800,000 sales was to customers outside Connecticut; while Max Goldman, Inc., a New York firm, bought 70 percent of its $321,000 purchases from outside New York, and 2 percent of its $368,000 sales were extra-state (R. 249-250; 134-135, 139-140). Goldman's sales of $2,575 worth of supplies to Langer were equal to or greater than its sales to 80 percent of its customers (R. 249; 140), and Mar Le's sales of $6,000 worth of supplies to Langer were four times as great as its average sales per customer (R. 249, n. 15; 135-136). In addition to Langer's purchases from interstate enterprises, Langer performed electrical work for firms engaged in the production of goods for interstate commerce (R. 250-251; 141-143, 144-146, 149-152).

The operations pertaining to this house construction job, the Board found, are part of "the web of

commerce involved in the building and construction industry generally" which "is nation-wide in scope, involves large interchanges of materials in interstate commerce, is highly complex in its requirements as to materials, has ramifications substantially affecting numerous and varied types of production activity, and accounts annually for an aggregate expenditure of many billions of dollars * * *" (R. 251, n. 21; 214-227). Thus, "the value of all construction work in the United States during 1946 was $15,667,000,000. New construction accounted for $10,007,000,000 of that total, of which $3,300,000,000 was for new private residential construction" (R. 251, n. 21; 215). Although huge in the aggregate, in 1939, of the total number of establishments in the construction industry, 87.2 percent did an annual business of less than $25,000 for each establishment (R. 220).[2]

B. The Unfair Labor Practice Facts

Petitioner, International Brotherhood of Electrical Workers, Local 501, A. F. of L. (hereinafter referred to as the IBEW) is a labor organization, which has its principal office at Mt. Vernon, New York, and is engaged in promoting and protecting the interests of its members (R. 254; 6, 11). Its business representative or agent is petitioner William Patterson (R. 254; 7, 11). Prior to entry into the contract for the construction of the house, the

[2] See also, *Shore* v. *Building and Construction Trades Council*, 173 F. 2d 678, 681 (C.A. 3).

IBEW had become involved in a dispute with Langer because he was operating as a non-union electrical contractor (R. 256, n. 32; 63-76, 92-93).

The construction of the house was begun in the middle of December 1947 (R. 245-246; 40). By the middle of April 1948, Langer's two electricians, neither of whom was a member of the IBEW (R. 256; 77), had completed the roughing-in part of the electrical work on the house (R. 256; 77).

After Langer's electricians had completed the roughing stage of the electrical work, which must be done before the walls of the house can be finished, petitioner Patterson, the IBEW's business representative, visited the Greenwich house (R. 257; 160-161). He talked with Nicholas Deltorto, whose two carpenter employees, Ralph Ciancia and Angelo Bova, both members of the Carpenters union, were the only men then at work on the job (R. 257; 159-161). Patterson told Deltorto that the electrical work was being done by a non-union contractor *(ibid.)*. Deltorto stated that he did not know who was doing the electrical work *(ibid.)*. Patterson then asked Ciancia, one of the carpenters, if he knew that the job was non-union (R. 257; 177-178). Ciancia replied that he did not know that there were non-union men on the job *(ibid.)*.

On April 16, Patterson again visited the Greenwich house when Deltorto, Ciancia, and Bova were the only ones present (R. 258; 161). Ciancia and

Bova were working together on a scaffold at the time (R. 258; 183). Patterson talked only with Deltorto, but Bova, at least, overheard some of the conversation (R. 258; 183). Patterson, in substance, told Deltorto that the job was unfair because the electrical work was being done by a non-union organization (R. 258; 162). Deltorto again replied that he "didn't know about that" *(ibid.)*. Patterson commented that he "was sorry," and within 5 minutes began to picket the house with a placard which read, "This job is unfair to organized labor; IBEW 501 AFL" (R. 258; 162).

When Bova noticed Patterson with the placard, he suggested to his fellow carpenter Ciancia that they get down off the scaffold to "see what it's all about" (R. 258-259; 183). After they had read the legend on the placard, Bova said that he did not know what to do. Ciancia stated, "There's only one thing to do. Let's go home" *(ibid.)*. Thereupon, the two employees informed Deltorto that they were stopping work (R. 258-259; 162, 180, 183). All three then left the construction site *(ibid.)*. Thereafter Deltorto informed the general contractor, Giorgi, that "his carpenters had walked off the job because the electrical delegate had picketed the job" (R. 259; 44). Giorgi replied that he would have the matter "straightened out" (R. 259; 165).

That night Patterson notified Giorgi that Langer was "unfair" and that he "would have to

replace Samuel Langer with a union contractor in order to complete the job," and that if Giorgi did not replace Langer he "would probably not receive any skilled trades to finish the rest of the work." (R. 259; 46-47).

On April 17, Giorgi notified Langer of what had happened and informed him that in order for Giorgi to finish the house and get his money, Giorgi would have to obtain a union electrical subcontractor to do the rest of the electrical work (R. 259; 46, 77-78). Langer agreed to release Giorgi from his contract, stating that he would step aside so that a union contractor could take over *(ibid.)*. Thereafter, Langer performed no further work on the Greenwich house and Giorgi made arrangements with a union electrical subcontractor to finish the electrical work (R. 259-260; 48). Several days later Giorgi informed Deltorto that the trouble on the Greenwich house had been "straightened out" (R. 259-260; 165). Thereupon, Deltorto's carpenters returned to work on the project *(ibid.)*.

II. The Board's Conclusions

The Board found that the operations pertaining to the construction job affect commerce within the meaning of the Act (R. 296, 251-254).[5] The

[5] The Board explained (R. 296) that it would assert jurisdiction here "for the reasons stated in the majority opinion in the *Watson* case." (*Local 74, United Brotherhood of Carpenters, et al*, v. *National Labor Relations Board*, certiorari granted, No. 85, this Term). The two dissenting members

Board further found that petitioners, by picketing the construction job, induced or encouraged the employees of Deltorto, a subcontractor of Giorgi, the general contractor, to engage in a strike or concerted refusal in the course of their employment to perform services for Deltorto, an object thereof being to force or require Giorgi to cease doing business with Langer, another subcontractor on the same construction job (R. 297). The Board held that the picketing was not exempted from the reach of Section 8 (b) (4) (A) by Section 8 (c), stating that (R. 297): "Section 8 (b) (4) (A) prohibits peaceful picketing, as well as other means of inducement or encouragement, in furtherance of an objective proscribed therein, and * * * Section 8 (c) does not immunize such conduct."[4] Accordingly, the Board concluded that petitioners' conduct was in violation of Section 8 (b) (4) (A) of the Act *(ibid.)*.

III. The Board's Order

The Board ordered petitioners to cease and desist from inducing or encouraging the employees of Deltorto or any employer, by picketing or related conduct, to engage in a strike or a concerted

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of the Board stated that, because the case involved "an essentially local enterprise with only the most remote effect upon commerce," they would, as a discretionary matter, refuse to assert jurisdiction (R. 299).

[4] The Board adopted by reference (R. 297, n. 5) the reasoning set forth in its earlier opinion in *Wadsworth Building Co., Inc.*, 81 NLRB 802, 807-816.

refusal in the course of their employment to perform any services, where an object thereof is to force or require Giorgi Construction Company or any other employer or person to cease doing business with Langer (R. 297-298). The order also requires petitioners to post the customary notices of compliance (R. 298).

IV. The Decision Below

On May 16, 1949, petitioners filed in the court below a petition to review and set aside the Board's order (R. 301-310), and on June 24, 1949, the Board filed its answer requesting enforcement of its order (R. 313-317). On February 24, 1950, the court below handed down its opinion (R. 323-335) and on April 6, 1950, entered its decree (R. 336-337) enforcing the Board's order. Judge Clark dissented (R. 332).

SUMMARY OF ARGUMENT

I

The business activities of Langer and Giorgi, on this project as well as generally, involve a substantial interstate movement of materials and men. The secondary boycott here, which directly affected such movement, was clearly subject to the Board's jurisdiction. See also the Board's Brief in *Local 74* v. *National Labor Relations Board*, No. 85, this Term, pp. 23-27.

II

By inducing the employees of subcontractor Deltorto to refuse concertedly to perform any services for their employer, an object being to force Giorgi, the general contractor, to cease doing business with subcontractor Langer, with whom it was engaged in a labor dispute, the IBEW made "its sanctions bear, not on the employer who alone is a party to the dispute, but upon some third party who has no concern in it," and that is the "gravamen of a secondary boycott" (R. 327). See also the Board's Brief in *National Labor Relations Board* v. *Denver Building and Construction Trades Council*, No. 393, this Term, pp. 20-66.

III

Section 8 (c) does not remove from the reach of Section 8 (b) (4) (A) the picketing by which IBEW induced Deltorto's employees to exert secondary pressure on Giorgi.

A. To exempt peaceful picketing for an illegal objective from the reach of Section 8 (b) (4) (A) distorts its text, context, and purpose. On their face the words "induce or encourage" embrace every form of influence and persuasion designed to promote secondary pressure. Both the proponents and opponents of its enactment read them to have this effect. And it can hardly be supposed that Congress, in condemning secondary pressure, intended to permit the continuance of one of the most

effective means to that end, simply because it was "peaceful picketing."

Furthermore, if the words "induce or encourage" employees are qualified, as petitioners urge, by the words "by threat of reprisal or force or promise of benefit," which appear in Section 8 (c), Section 8 (b) (4) (A) would reach only the same conduct already condemned as "restraint and coercion" of employees in Section 8 (b) (1) (A). Congress could not have intended so sterile a construction. That the qualifying language of Section 8 (c) was not meant to apply to Section 8 (b) (4) (A) is apparent from the fact that the same conduct denominated an unfair labor practice by Section 8 (b) (4) (A) was made actionable in a civil suit by Section 303 of Title III, Labor Management Relations Act, 1947. No provision comparable to Section 8 (c) qualifies the words "induce or encourage" as they appear in Section 303.

In Section 8 (b) (4) (A), as in Section 303, Congress was concerned with a particular objective, and not with the character of the means used to accomplish that objective. To permit attainment of the forbidden objective merely because the means were not themselves unlawful, would defeat the very purpose of the provision.

B. Petitioners' argument rests on two mistaken assumptions: (1) picketing is pure speech, of the sort comprehended by the words "views, argument, or opinion"; and (2) verbal furtherance of an un-

lawful objective was regarded by Congress as simply an expression of "views, argument, or opinion."

1. Picketing is more than the expression of "views, argument, or opinion"; it also has coercive features. Not "being the equivalent of speech as a matter of fact," picketing "is not its inevitable legal equivalent" (*Hughes* v. *Superior Court*, 339 U. S. 460, 465); and it cannot be assumed that Congress meant Section 8 (c) to be construed otherwise, particularly if the result would be to immunize picketing in furtherance of secondary strikes, which Congress unquestionably intended to outlaw.

2. Even if picketing could be regarded as "views, argument, or opinion," it still would not be protected by Section 8 (c) when used to further an unlawful secondary boycott. Union inducement of employees to exert secondary pressure falls into the category of statements which are in themselves unlawful or incite to unlawful action. Such utterances can invoke no appeal to the statutory protection of "views, argument, or opinion." It is a doctrine of long standing that the instigator of a wrong, whether the wrong be a crime, a tort, or a breach of contract, is as culpable as the actual perpetrator. And there is no evidence that Congress intended, by enacting Section 8 (c), to reject this doctrine so well established in the law. The circumstance that, unlike a union, employees may

individually yield to the inducement without themselves being chargeable with an unfair labor practice does not legalize concerted secondary pressure exerted by a union. The immunity of individual employees rests upon the expressed desire of Congress not to expose them either to the pecuniary hazards of a damage suit or to any risk of involuntary servitude which might be entailed in a Board order requiring individual desistance from a refusal to work.

C. No disparity in the application of Section 8 (c) as between unions and employers results from this construction. Both unions and employers are required to desist from incitement to unlawful action. And in determining the nature of the action induced by utterances of employers, no less than of unions, consideration is given not only to the statement but also to the relevant circumstances. That this result is consistent with the objectives of Congress appears from the legislative history which shows that the problem which Congress dealt with in Section 8 (c) related entirely to speech for lawful ends. See 93 Cong. Rec. 3837, 2 Leg. Hist. 1011. The only purpose of Section 8 (c) was to put an end to a supposed practice whereby the Board had condemned as coercive, or had considered as evidence of unfair practices, non-coercive expressions aimed at a legitimate goal, merely because the speaker had committed

other unfair labor practices, remote in time and unconnected by circumstances to the utterances.

D. Prohibition of picketing in furtherance of secondary pressure entails no unconstitutional abridgment of free speech. Congress clearly has the right to prevent the substantive evil of secondary boycotts. Picketing to accomplish a forbidden objective has a substantial and present propensity of bringing about the substantive evil. The legislative judgment embodied in Section 8 (b) (4) (A) does not rest merely upon an absence of an immediate employer-employee relationship. And the interdependence of economic interest of those engaged on a common construction job does not prohibit Congress, as a matter of constitutional power, from extending protection against secondary boycotts to each of the individual contractors adversely affected by such boycotts.

IV

The Board's order is tailored to the precise violation found and does no more than enjoin petitioners from exerting the same kind of economic pressure against Langer through other employers as they exerted upon Langer through Giorgi and Deltorto in the instant case. Petitioners' fears that the order is unduly broad are unfounded.

ARGUMENT

I. THE OPERATIONS PERTAINING TO THE CONSTRUCTION JOB AFFECT COMMERCE

The Board's Brief in *Local 74* v. *National Labor Relations Board* (the *Watson* case), No. 85, this Term, pp. 25-47, contains a discussion of the applicable principles which support the Board's exercise of jurisdiction in the instant case as well as in the *Watson* case and the *Denver* case, No. 393, this Term, both under the Act and under the Commerce Clause. We supplement that discussion here only by quoting the pertinent passage of Chief Judge Learned Hand's opinion for the court below (R. 325-326):

> It is now abundantly established that in the Labor Relations Acts Congress meant to exercise to the fullest extent its power over interstate commerce;* and there can no longer be any doubt that the constitutional scope of that power covers occasions such as this. Langer's activities would alone be enough. In order to perform his part of the work, small though it was, he had to go from New York to Connecticut; and the materials which he used upon the job he had to bring from New York. Besides, his general business required him continuously to import substantial amounts of material from other states into New York, and he did a substantial amount of work in Connecticut in addition to the job in question,

* *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1; *N.L.R.B.* v. *Fainblatt*, 306 U.S. 601; *Polish National Alliance* v. *N.L.R.B.*, 322 U.S. 643; *United Brotherhood* v. *Sperry*, 170 Fed. (2) 863, 867 (C.A. 10).

as well as work for large contractors whose own interstate activities were very large indeed. Giorgi's headquarters were also in New York, whence, like Langer, he had to travel to Greenwich to supervise his employees; moreover, the materials which he used upon the job he had brought from New York; and his business, again like Langer's, extended into other states in substantial amount. It was Patterson's purpose to put an end to Langer's activities on the house by preventing Deltorto from proceeding with his contract and thus compelling Giorgi to get rid of Langer. It is idle to argue therefore that Patterson's acts did not immediately "affect," or that they were not designed to "affect," these interstate activities. Insignificant as they were, they were enough to satisfy the demands of the Act.* Moreover, since the decision may determine Langer's general operations which extend to many other interstate transactions, it may well be that the Board would have had jurisdiction, even though this particular dispute had involved no more than if the house had been in Port Chester, New York.**

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* *N.L.R.B.* v. *Fainblatt*, *supra*, 606; 306 U.S. 601.

** *Polish National Alliance* v. *N.L.R.B.*, *supra*, 322 U.S. 643.

II. PETITIONERS' ACTIVITY CONSTITUTED AN UNLAWFUL EXERTION OF SECONDARY PRESSURE WITHIN THE MEANING OF SECTION 8 (b) (4) (A) OF THE ACT

In the Board's Brief in *National Labor Relations Board* v. *Denver Building and Construction*

Trades Council (the *Denver* case), No. 393, this Term, pp. 20-66, we have discussed in detail the criteria which the Board has applied in determining whether picketing and other strike pressures, in common-situs cases such as this, are secondary and hence violative of Section 8 (b) (4) (A), or primary and hence lawful. We summarize here the considerations which led the Board to conclude that the picketing in the instant case was designed to bring strike pressure to bear upon employers other than Langer, the primary employer, and was therefore secondary and prohibited.

The primary dispute in this case was between the IBEW and Langer; its subject was the employment by Langer of non-union electricians.[5] The ultimate object of the union, as the facts set forth in the Statement, *supra*, pp. 7-10, show, was to force Langer off the job. In effecting this purpose, the IBEW by-passed Langer and his employees altogether, and brought pressure to bear entirely upon other employers and their employees. At no time during construction of the house did the IBEW approach Langer or his employees directly and seek either to induce his employees to join the Union or to induce Langer to withdraw. Instead, after informing Deltorto, the carpenter contractor, of the IBEW's objection

[5] It may well be that Langer's operation as a non-union contractor was necessitated by the IBEW's refusal to admit his employees to union membership (R. 63-76, 92-93, 112-123).

to Langer, the IBEW's representative picketed the construction site at a time when only Deltorto's employees were working. The picketing, therefore, took place at a time when its sole purpose was to influence employees of Deltorto, with whom the IBEW had no dispute other than that involved in his working on the same job as Langer, to strike. This purpose is further evidenced by the fact that the picketing placard characterized the entire job, rather than Langer alone, as unfair. When the picketing induced Deltorto's employees to leave the job in concert, Deltorto informed Giorgi, the general contractor, of the interruption of work "because the electrical delegate had picketed the job" (*supra*, p. 9). The same evening, the IBEW representative told Giorgi that he "would have to replace Samuel Langer with a union contractor in order to complete the job," and that if Giorgi did not replace Langer, he "would probably not receive any skilled trades to finish the rest of the work" (*supra*, pp. 9-10). As with Deltorto, the IBEW had no dispute with Giorgi other than that which flowed from his engagement of Langer. As a result of the pressure exerted through the successful inducement of Deltorto's employees, Giorgi's contract with Langer was cancelled by mutual assent and, arrangements having been made to complete the electrical work with a union contractor, Deltorto's employees returned to work.

Thus, as the court below observed, the IBEW

made its "sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it," and that is the "gravamen of a secondary boycott" (R. 327).

III. SECTION 8 (c) DOES NOT IMMUNIZE VERBAL INSTIGATION OR FURTHERANCE OF SECONDARY STRIKES FORBIDDEN BY SECTION 8 (b) (4) (A)

As has been stated, in order to compel Giorgi, the general contractor, to dispense with the services of Langer, the non-union electrical subcontractor, the IBEW induced two employees of Deltorto, another subcontractor on the same job, to refuse concertedly to perform any services for Deltorto. The inducement was accomplished by the patrol of a single picket bearing the placard, "This job is unfair to organized labor; IBEW 501 AFL" (*supra,* p. 9). Petitioners contend that, "even if it is assumed that [this conduct] constituted a violation of Section 8 (b) (4) (A) of the Act, and such application of the Act is constitutional, nevertheless there was no basis for issuance of the order in this case because under Section 8 (c) of the Act the picketing under the facts of this case could not constitute evidence of such violation" (Br., p. 68).

Section 8 (c) provides that:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an un-

> fair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

The Board held in this case that "Section 8 (b) (4) (A) prohibits peaceful picketing, as well as other means of inducement or encouragement, in furtherance of an objective proscribed therein, and that Section 8 (c) does not immunize such conduct" (R. 297). In explanation of its conclusion, the Board cited its earlier decision in *Wadsworth Building Co., Inc.*, 81 NLRB 802 (R. 297, n. 5). In enforcing the Board's order in that case, the Court of Appeals for the Tenth Circuit affirmed the view, as did the court below in this case (R. 328-331), that Section 8 (c) does not "create an asylum of immunity from the proscription of Section 8 (b) (4) (A) * * *." *National Labor Relations Board* v. *United Brotherhood of Carpenters and Joiners of America*, 184 F. 2d 60, 62 (C.A. 10), pending on petition for certiorari, No. 387, this Term. Accord: *United Brotherhood of Carpenters and Joiners of America* v. *Sperry*, 170 F. 2d 863, 868-869 (C.A. 10); *Printing Specialties and Paper Converters Union* v. *LeBaron*, 171 F. 2d 331, 334 (C.A. 9).

We shall show (1) that to immunize picketing, where its purpose is to promote secondary strikes, does violence to the text of Section 8 (b) (4) (A), its place in the statutory scheme, and the objective

it is designed to serve; (2) that as an element of secondary pressure, picketing is not the expression of "views, argument, or opinion" within the meaning of Section 8 (c), for (a) picketing has aspects of compulsion which induce action apart from the nature of the information imparted, and (b) even as utterance alone, it is a means of furthering the attainment of an unlawful objective, which traditionally has no claim to immunity as speech; (3) that the function of Section 8 (c) is to safeguard uncoercive speech which is designed, not to induce prohibited conduct, but to influence action which can lawfully be taken; and (4) that no unconstitutional abridgment of the right of free speech flows from prohibiting verbal instigation or furtherance of secondary strikes in labor controversies.

A. THE TEXT, CONTEXT, AND PURPOSE OF SECTION 8 (b) (4) (A) PRECLUDE ELIMINATION OF SECONDARY PICKETING FROM THE STATUTORY BAN

Petitioners do not deny that picketing does "induce or encourage" employees to engage in work stoppages prohibited by Section 8 (b) (4) (A). They rely solely on the immunity which Section 8 (c) extends to the expression of "views, argument, or opinion." As we shall show, however, to regard picketing designed to provoke secondary strikes as an expression of "views, argument, or opinion," and hence not reachable by

Section 8 (b) (4) (A), distorts the text, context, and purpose of Section 8 (b) (4) (A).

1. *The text of Section 8 (b) (4) (A):* On their face the words "induce" and "encourage" in Section 8 (b) (4) (A) comprehend every form of influence and persuasion designed to promote secondary strikes. As the Board observed, these "words of broad connotation" produced no disagreement in Congress as to their "sweeping implications and meaning," and both opponents and proponents of Section 8 (b) (4) (A) read them "to prohibit peaceful picketing, as well as persuasion and encouragement to further a secondary boycott." *Wadsworth Building Co., Inc.*, 81 NLRB, at 808, 810.[6]

A single illustration from the legislative history will suffice to show the comprehensive scope which the legislators attributed to the words "induce" and "encourage." In opposing the enactment of Section 8 (b) (4) (A), Senator Pepper stated that it would prohibit workers, on strike because of the substandard employment conditions prevailing at

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[6] *E.g.*, statements of Senator Taft, 93 Cong. Rec. 4198-99, in 2 Leg. Hist. 1106-08; Senator Pepper, 93 Cong. Rec. 4197-99, in 2 Leg. Hist. 1103-09; Senator Murray, 93 Cong. Rec. 4844, in 2 Leg. Hist. 1366. See also, S. Rep. No. 105, 80th Cong., 1st Sess., Minority Views, 19, in 1 Leg. Hist. 481; *Hearings before the Committee on Labor and Public Welfare, United States Senate, on S. 55 and S. J. Res. 22*, 80th Cong., 1st Sess., 60-63, 1496-97, 1717-18, 1732-33, 1801, 2060-61, 2148; *Hearings before Committee on Education and Labor, House of Representatives, on Bills to Amend and Repeal the National Labor Relations Act*, 80th Cong., 1st Sess., 477, 539, 547-49, 2149-50, 2572-86, 2691.

the plant at which they work, from "appealing" to employees at another plant to "stand by them in their struggle to hold up and defend the working standards with respect to which they are engaged in a controversy," by refraining from handling the product of the struck plant; "this provision," he said, "would make that activity unlawful, even though by *peaceful methods or means they tried to persuade* those workers to accomplish, with them, that objective."[7] In reply, Senator Tart agreed that such activity would be banned, for it "is similar to that in the case of the New York Electrical Workers' Union," a reference to conduct described in *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797.[8] That conduct entailed "the traditional labor weapons of refusal to work upon disfavored goods, *with peaceful and non-violent persuasion, picketing, and blacklisting,* and now the active participation of the local employers."[9] Despite its element of peaceful picketing, the *Allen Bradley* case was repeatedly mentioned throughout the legislative deliberation upon Section 8 (b) (4) (A) as

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[7] 93 Cong. Rec. 4198, in 2 Leg. Hist. 1106-1107. (Emphasis supplied.)

[8] 93 Cong. Rec. 4199, in 2 Leg. Hist. 1107.

[9] *Allen Bradley Co.* v. *Local Union No. 3.*, 145 F. 2d 215, 219 (C.A. 2). This Court, in its opinion in the *Allen Bradley* case, referred to the Second Circuit's opinion for a more detailed statement of the case (325 U.S. at 798). The injunction ultimately entered in the *Allen Bradley* case forbade "Inducing or seeking or attempting to induce" certain "prohibited overt acts" (164 F. 2d 71, 74 and n. 3).

illustrating the type of labor activity to be banned.[10] At no time during the course of debate did either proponents or opponents of the Act suggest that Section 8 (c) was designed or intended to frustrate this objective, or that that would be its effect, see pp. 45-55, *infra*.

It is plain, therefore, that Congress intended to prohibit even peaceful picketing in furtherance of an illegal secondary boycott. Indeed, "it can hardly be supposed that Congress, in enacting Section 8 (b) (4) (A) as the legislative response to the asserted evils of secondary boycotts, did not envisage the whole gamut of union activities by which such boycotts are achieved. Obviously, picketing, though peaceful, as one of the most effective forms of economic pressure, must have been within the contemplation of Congress as one of the practices to be curbed by that provision." *Wadsworth Building Co., Inc.*, 81 NLRB 802, 810-811.

2. *The statutory context of Section 8 (b) (4) (A):* As the Board observed, in contrast to the broad connotation of the words "induce or encourage," "Congress used more restrictive terminology * * * in other provisions of the Act. Thus, for example, the unfair labor practice is worded in Section 8 (b) (1) as 'to restrain or coerce' employees; in Section 8 (b) (2) as 'to cause or at-

[10] S. Rep. No. 105, 80th Cong., 1st Sess., 22, in 1 Leg. Hist. 428; 93 Cong. Rec. 4132, 4199, 4439, 4837, 5011, in 2 Leg. Hist. 1056, 1107, 1213, 1354, 1491. See the Board's brief in *National Labor Relations Board* v. *International Rice Milling Co.*, No. 313, This Term, pp. 28-29 and n. 17.

tempt to cause an employer'; [11] in Section 8 (b) (5) as to 'require of employees'; and in Section 8 (b) (6) as 'to cause or attempt to cause an employer'." *Wadsworth Building Co., Inc.*, 81 NLRB 802, 808.[11a]

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[11] The legislative history of Section 8 (b) (2) is especially illustrative of the "narrower scope" (81 NLRB at 808) of the words there used. As originally passed by the Senate, the words employed in 8 (b) (2) were "to persuade or attempt to persuade an employer." H.R. 3020, 80th Cong., 1st Sess., Sec 8 (b) (2) (May 13, 1947), in 1 Leg. Hist. 239-40. Thos words were changed to "cause or attempt to cause" in order to make the language consistent "with the provisions guaranteeing all parties freedom of expression." 93 Cong. Rec. 6443, in 2 Leg. Hist. 1539. The Board observed that no comparable rewording of Section 8 (b) (4) was made. 81 NLRB at 814. However, since picketing "has aspects which are more than speech," its use to promote the "unlawful objective" defined by Section 8 (b) (2) is banned, but other verbal blandishment, though amounting to inducement or encouragement, may not be sufficient to be an "attempt to cause." *Henry Shore*, 90 NLRB No. 224, 26 LRRM 1382, 1383. To the extent that the court below is of the view that inducement under 8 (b) (4) is always coequal with an "attempt to cause" when employed to achieve an 8 (b) (2) objective (R. 328-329), the Board is not in agreement.

[11a] The pertinent portions of Section 8(b) are as follows:

"It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 * * *

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

"(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant

The relationship between Section 8 (b) (1) (A) and Section 8 (b) (4) is particularly indicative of the unrestricted reach of inducement and encouragement. To qualify Section 8 (b) (4) by Section 8 (c) is in effect to read the words "induce or encourage" as modified by the words by "threat of reprisal or force or promise of benefit." The effect of such qualification is that Section 8 (b) (4) (A) would reach the same verbal conduct already condemned by Section 8 (b) (1) (A) as "restraint or coercion." (Board's Br., *National Labor Relations Board* v. *International Rice Milling Co.*, No. 313, This Term, pp. 39-42.) The Board noted the incongruity of attributing to Congress an intent to do "such a meaningless thing as to make conduct, which it had already prohibited in an earlier section * * *, an unfair labor practice in a later section * * * conditioned, however, on further proof of unlawful objective." 81 NLRB, at 813.

Furthermore, the Board observed that Section 303 of Title III of the Labor Management Relations Act, 1947, "authorizes civil suit for damages arising out of the unfair labor practices defined in Section 8 (b) (4) and reenacted verbatim in Section 303" (81 NLRB at 814). However, no

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factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

provision comparable to Section 8 (c) exists to qualify the words "induce or encourage" as they appear in Section 303. Senator Taft explained that the definition in Section 303 "is exactly the same as the definition we had of an unfair labor practice." 93 Cong. Rec. 4858, 2 Leg. Hist. 1371. It would be anomalous if the inducement sufficient to sustain an award of damages in a federal district court would be insufficient to warrant an order requiring its discontinuance before the Board. Cf. *United States* v. *Hutcheson,* 312 U. S. 219, 234-235. Obviously "Congress intended to give both sections the same scope and meaning" (81 NLRB 814), for "a right of suit for damages" was designed to supplement the "injunctive remedy through the National Labor Relations Board" (93 Cong. Rec. 4858, 2 Leg. Hist. 1371). To achieve this result, it is necessary to read Section 8 (b) (4) as embracing peaceful picketing.

3. *The objective of Section 8 (b) (4) (A):* In this provision Congress outlawed the exertion of secondary pressure in labor disputes. (Board's Brief, *National Labor Relations Board* v. *International Rice Milling Co.,* No. 313, this Term, pp. 26-34.) Picketing, as the Board observed, is the customary means of enlisting "the support of others to bring economic pressure to bear on an employer." *Wadsworth Building Co., Inc.,* 81 NLRB 802, 811. To ban the wrong but permit its inducement "would be to impute to Congress an incongruous intent to

permit, through indirection, the accomplishment of an objective which it forbade to be accomplished directly" (*ibid.*). It is plain, however, that it "was the *objective* of the union's secondary activities * * *, and not the *quality of the means* employed to accomplish that objective, which was the dominant factor motivating Congress in enacting" Section 8 (b) (4) (A). 81 NLRB at 812. To excise peaceful picketing from the inducement banned by Section 8 (b) (4) (A) "would practically vitiate its underlying purpose * * *." (*Ibid.*) Just as Congress was indifferent to the violent character of the inducement when it pertained to primary pressure (Board's Brief, *National Labor Relations Board* v. *International Rice Milling Co.*, No. 313, This Term, pp. 63-66), so it was equally indifferent to the peaceful character of the inducement when it promoted secondary pressure. Congress drew no distinction between inducement of a forbidden objective accomplished by coercive means and that "achieved by peaceful but oftentimes quite as effective means" (*Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 513). In Section 8 (b) (4) (A) it condemned both.

Furthermore, not only is the proscription of picketing necessary to the effectuation of the purpose of subdivision (A) of 8 (b) (4), but it is also necessary to the effectuation of subdivisions (B), (C), and (D), which also "would otherwise be thwarted." *Wadsworth Building Co., Inc.*, 81

NLRB 802, 815, n. 46. This is particularly evident with respect to 8 (b) (4) (C), which prohibits every form of strike or cognate economic pressure where an object is to cause the employer to bargain with one union where another has been certified as the exclusive representative, a purpose uniformly condemned as objectionable. (Board's Brief, *National Labor Relations Board* v. *International Rice Milling Co.*, No. 313, this Term, p. 71 and n. 63). It is inconceivable that Congress intended to condone inducement, however peaceful, to achieve the forbidden objective of displacing an elected representative with a defeated minority union. Cf. *Douds* v. *Local 1250*, 170 F. 2d 700, 701 (C.A. 2), which sustained an interlocutory injunction that prohibited inducing employees to strike, forbade picketing, and prohibited the visiting of homes of other employees for the purpose of inducing them to strike in furtherance of this objective.

B. PICKETING TO INDUCE SECONDARY STRIKES IS NOT THE EXPRESSION OF "VIEWS, ARGUMENT, OR OPINION," FOR IT IS MORE THAN SPEECH AND IS, IN ANY EVENT, VERBAL FURTHERANCE OF AN UNLAWFUL OBJECTIVE

Overlooking the distortion of the text, context, and purpose of Section 8 (b) (4) (A) which flows from removing picketing from its ban of inducement, petitioners contend that that result is compelled by the fact that Section 8 (c) protects the

expression of uncoercive "views, argument, or opinion * * * under any of the provisions of this Act * * *." The contention rests upon two mistaken assumptions: (1) picketing is pure unalloyed speech of the sort comprehended by the words "views, argument, or opinion," and (2) verbal furtherance of an unlawful objective was regarded by Congress as simply an expression of "views, argument, or opinion."

1. *Picketing is more than speech:* While "picketing is a mode of communication it is inseparably something more and different." *Hughes* v. *Superior Court,* 339 U. S. 460, 464. It "establishes a *locus in quo* that has far more potential for inducing action or nonaction than the message the pickets convey." *Building Service Employees International Union* v. *Gazzam,* 339 U. S. 532, 537. The influence it exerts exists "quite irrespective of the nature of the ideas which are being disseminated" (*Giboney* v. *Empire Storage and Ice Co.,* 336 U. S. 490, 503, n. 6, quoting from *Bakery Drivers Local* v. *Wohl,* 315 U. S. 769, 776), and these "compulsive features inherent in picketing" give it a character beyond "mere communication as an appeal to reason" (*Hughes* v. *Superior Court,* 339 U. S. 460, 468).

For the same reasons, picketing is more than the expression of "views, argument, or opinion" within the meaning of Section 8 (c). Not "being the equivalent of speech as a matter of fact," pick-

eting "is not its inevitable legal equivalent." *Hughes* v. *Superior Court*, 339 U. S. 460, 465. Since it is more than "views, argument or opinion," it cannot be assumed, in the absence of evidence to the contrary, that Congress regarded picketing as embraced within these words particularly if the result would be to immunize picketing in secondary strike situations, which Congress patently intended to outlaw. Picketing, therefore, has no status as "views, argument, or opinion" within the meaning of Section 8 (c). *Henry Shore*, 90 NLRB, No. 224, 26 LRRM 1382.[12]

Petitioner concedes (Br., pp. 79-80) that peaceful picketing is more than speech, and not protected by Section 8 (c), when directed at union members by a labor organization which has disciplinary powers over them. But petitioner urges that Section 8 (c) protects as speech peaceful picketing which is not coupled with such power of discipline. In the *Hughes* and *Gazzam* cases, however, like the instant case, there was no showing that the picketing was directed at persons over whom the organization conducting the picketing

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[12] As it explained in *Henry Shore*, 90 NLRB, No. 224, 26 LRRM 1382, 1383, the Board in *Wadsworth Building Co., Inc.*, 81 NLRB 802, "assumed that peaceful picketing was necessarily an expression of 'views, argument, or opinion' within the meaning of Section 8 (c)," but it has since decided that its assimilation of the two "was not correct." It was persuaded to this conviction by this Court's "present views on the status of picketing," and it further concluded that Congress intended no greater immunity for picketing under Section 8 (c) than "the protective scope of the Constitution."

had powers of discipline, and the holdings in those cases that picketing was more than speech did not turn, and could not have turned, on the presence of such disciplinary power. The distinction drawn in those cases is between publication by newspaper or circular, on the one hand, and by "patrolling a picket line" on the other. *Hughes* v. *Superior Court*, 339 U. S. 460, 465. The rationale set forth in the *Hughes* case (*ibid.*)[13] leaves no room for the distinction which petitioner seeks to draw, either as a matter of constitutional law or of statutory construction. Petitioner's further assertion, that if such a line were drawn for the purposes of Section 8 (c) Section 8 (b) (4) (A) could still reach some forms of inducement by picketing, obviously does not warrant petitioner's conclusion that Congress intended to exempt from the reach of the Section other equally important forms of inducement by picketing. It is no justification for restrictive interpretation of a statute that the restriction renders the statute not wholly, but only partly, ineffective.

2. *Picketing in furtherance of an unlawful objective is not an expression of "views, argument, or opinion"*: Even if it could be regarded as "views, argument or opinion," picketing designed to bring about secondary pressure would not be pro-

[13] "* * * the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word."

tected by Section 8 (c), for the objective it promotes is unlawful, and there is no evidence that Congress intended to grant immunity as speech to the instigation or furtherance of unlawful conduct. In this aspect, "the purpose which [the picketing] seeks to effectuate gives ground for its disallowance." *Hughes* v. *Superior Court,* 339 U. S. 460, 465-466.

a. Speech Utilized to Obtain an Unlawful Objective Is Not Protected

Picketing which has this objective, the inducement of employees to exert secondary pressure, falls into the category of statements which are "in themselves unlawful" and "incite to unlawful action." *Thomas* v. *Collins,* 323 U. S. 516, 536; *Hughes* v. *Superior Court,* 339 U. S. 460, 465-466. As such, the utterance can invoke no appeal to the statutory protection of "views, argument, or opinions," for traditionally "encouraging an actual breach of law," as distinct from statements which "tend to produce unfavorable opinions of a particular statute or of law in general," finds no immunity as speech. Holmes, J., in *Fox* v. *Washington,* 236 U. S. 273, 277. "One may not counsel or advise others to violate the law as it stands. Words are not only the keys of persuasion, but the triggers of action, and those which have no purport but to counsel the violation of law cannot by any latitude of interpretation be a part of the public opinion which is the final source of government in

a democratic state." L. Hand, J., in *Masses Pub. Co.* v. *Patten*, 244 Fed. 535, 540 (S.D.N.Y.). "To hold that" the verbal "means through which" forbidden conduct was "accomplished could not be enjoined would be to render the law impotent." *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 438-439.

In consequence, as the court below observed, the phrase "views, argument, or opinion," in Section 8 (c) cannot be read as safeguarding the inducement of a wrong without giving its words "revolutionary significance" (R. 330), for it "would be an exception to long settled principles of civil and criminal liability" (R. 329-330):[13a]

> . . . he, who provokes or instigates a wrong, makes himself a party to the wrong, and is equally liable with the perpetrator. This was apparently settled as to civil liability at least as early as the third quarter of the eighteenth century: "Not only he who does an act, but who commands or procures it to be done" is a trespasser.[a] As the *Restatement of Torts*[b]

[a] *Barker* v. *Braham*, 2 W. Blacks, 866, 868.
[b] §876(a).

[13a] Petitioners contend that the analogy to civil and criminal liability is inapt because "Section 8 (b) (4) (A) is not intended to punish for wrongs committed" (Br., p. 71). But civil liability is not "intended to punish" either; moreover, "It is not the presence of criminal sanctions which makes a * * * policy 'important public law'" (*Building Service Union* v. *Gazzam*, 339 U. S. 532, 540). Conduct condemned as an unfair labor practice is no less a wrong than that which falls under the more conventional rubric of crime, tort, or breach of contract.

puts it: "for harm resulting to a third person from the tortious conduct of another, a person is liable if he (a) orders or induces such conduct."[c] One striking illustration is inducing a breach of contract by the obligor;[d] or inducing the termination of a terminable business relation, which would have otherwise continued.[e] The same doctrine prevails as to criminal liability. The principle, long embodied in § 2 of the Criminal Code,[f] which defines as a principal, anyone who "aids, abets, counsels, commands, induces, or procures" the commission of the forbidden act,[g] goes back as far as Bracton,[h] who at folio 142 declared: "For it is colloquially said that he sufficiently kills who advises (*praecipit*) killing."[i]

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[c] *Ewald* v. *Lane*, 104 Fed. (2) 222 (C.A.D.C.); *Hickman* v. *Taylor*, 75 Fed. Supp. 528, 531, 532; aff'd 170 Fed. (2) 327, 329 (C.A. 3).

[d] *Angle* v. *Chicago & St. Paul Railway Co.*, 151 U.S. 1; *Bitterman* v. *Louisville & Nashville R. R. Co.*, 207 U.S. 205; *Robins Dry Dock & Repair Co.* v. *Flint*, 275 U.S. 303.

[e] *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U.S. 229.

[f] § 2, Title 18, U.S.C.

[g] *Nye & Nissen* v. *United States*, 336 U.S. 613, 618, 619.

[h] *United States* v. *Peoni*, 100 Fed. (2) 401 (C.A. 2).

[i] *Pollack & Maitland*, Vol. II, p. 507.

It is, therefore, as the court below concluded (R. 330), "highly unlikely that by § 8 (c) Congress meant to abolish a doctrine, so deeply embedded in our civil and criminal law." Inducement of employees to exert secondary pressure, which is verbal furtherance of an unlawful objective, is thus not within the protective ambit of 8 (c).

Moreover, there is in this case no commingling of legal and illegal purpose so as conceivably to protect the utterance as an expression of "views, argument, or opinion" because of its "double character" (R. 330, 331-332).[13b] As in *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 502, there is no occasion to consider "the possibility of separating the picketing conduct into illegal and legal parts," for its "sole, unlawful immediate objective" was to induce a violation of law. No immunity, statutory or constitutional, extends to "speech or writing used as an integral part of conduct in violation of a valid * * * statute" (336 U. S. at 498).

b. *The Unlawful Objective*

The wrong defined by Section 8 (b) (4) (A) is for a labor organization or its agents to draw a neutral employer into a labor controversy through the exertion of secondary pressure on him. It is equally a wrong for a labor organization "to induce or encourage the employees of any employer" to take such action. Contrary to petitioner's conten-

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[13b] Cf. *Wolferman* v. *Root*, 356 Mo. 976, 982, 204 S. W. 2d 733, 736, certiorari denied, 333 U. S. 837: "The evidence [does] disclose that one of the purposes for the picketing is for giving information to the public. While we assume that purpose is lawful still when it is coupled, as it is here, with unlawful purposes, the fact one of several purposes is lawful does not make the picketing lawful. Picketing for both lawful and unlawful purposes is unlawful. See Restatement, Torts, § 796. Cf. *Baush Machine Tool Co.* v. *Hill*, 231 Mass. 30, 120 N. E. 188; *Folsom* v. *McNeil*, 235 Mass. 269, 126 N. E. 479."

tion (Br., p. 72), the circumstance that, unlike a labor organization, employees may individually yield to the inducement without themselves being chargeable with an unfair labor practice does not legalize the secondary pressure which the inducing union thus achieves.

In the form in which Senator Taft originally proposed Section 303 of Title III, Labor Management Relations Act, 1947, the damage suit analogue of 8 (b) (4) (A), it was made "unlawful" for "any person" to engage in or induce secondary pressure.[14] In opposing the measure, Senator Morse objected that (93 Cong. Rec. 4839-40, in 2 Leg. Hist. 1357-1358):

> * * * it * * * makes every person who participates in a strike for one of the outlawed objectives liable to damage suits. In other words, the proposal * * * would open wide the doors of the Federal courts to damage suits against any person who engaged in a strike or attempted to persuade other employees to engage in a strike for one of the prohibited objectives.
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> The proposal very definitely would take us back at least 40 years and we would again have the spectacle of mass suits against employees, similar to the infamous Danbury Hatters case. * * *
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> * * * * * *

It also should be pointed out that the substitute proposal is inconsistent with the pres-

[14] 93 Cong. Rec. 4770, in 2 Leg. Hist. 1346.

ent provision in the bill allowing a union to be sued for breach of contract. Section 301 of the bill permits suits against labor organizations only, whereas the substitute proposal allows damage suits against "any person." Also, Section 301 limits recovery to the assets of the union. The substitute allows the attachment of employees' bank accounts and all their property.[15]

In reply, Senator Taft stated: "I am amending the proposal, by striking out the word 'person', * * * and inserting in lieu thereof 'labor organization', so that action will be open only against labor organizations promoting this type of strike."[16] To prevent suits "against individuals,"[17] Senator Taft submitted an amended proposal deleting the word "person" and substituting "labor organization" in its stead,[18] and in that form it was passed.[19]

The refusal of Congress to subject individual employees to the pecuniary hazards of damage

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[15] Section 301 (b), Title III, Labor Management Relations Act, 1947, provides that: "Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

[16] 93 Cong. Rec. 4840, in 2 Leg. Hist. 1358.

[17] 93 Cong. Rec. 4843, in 2 Leg. Hist. 1365.

[18] 93 Cong. Rec. 4858, in 2 Leg. Hist. 1370.

[19] 93 Cong. Rec. 4874-75, in 2 Leg. Hist. 1399-1400.

suits was complemented by freeing employees as individuals from Board process. The inclusion in the House bill [20] of "an employee" among those chargeable with unfair labor practices was deleted in conference.[21] It manifested the traditional reluctance of Congress to expose individual employees to any risk of involuntary servitude, which might be entailed in a Board order requiring individual desistance from a refusal to work, a concern reflected in Section 502, Title V, Labor-Management Relations Act, 1947:

> Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

Except for the addition of the last clause pertaining to hazardous employment, this provision is identical with Section 2 (Tenth) of the Railway

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[20] H. R. 3020, 80th Cong., 1st Sess., Sec. 8 (b), in 1 Leg. Hist. 178; H. Rep. No. 245, 80th Cong., 1st Sess. 30, in 1 Leg. Hist. 321.

[21] H. Rep. No. 510, 80th Cong., 1st Sess. 42, in 1 Leg. Hist. 546.

Labor Act,[22] of which this Court stated: "The purpose of this limitation was manifestly to protect the individual liberty of employees and not to affect proceedings in case of combinations or group action." *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S. Clerks*, 281 U. S. 548, 566-567.[23] And because the sanctions of the Board can be directed only against a labor organization or its agents, the Act is invulnerable to an objection that it compels servitude by individual employees,[24] an additional reason for freeing them from direct chargeability with unfair labor practices.

It is plain, therefore, that the immunity from Board processes of individual employees who engage in secondary pressure is explained by the fact that Congress considered it unnecessary and undesirable to subject them as individuals to legal sanctions. It in no way reflects a congressional judgment that the secondary pressure achieved by the successful inducement of employees is lawful.[25] Unions which induce employees to engage

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[22] 48 Stat. 1185, 1189, 45 U. S. C. 151, 152 (Tenth).

[23] See also, *United Auto Workers* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 251; *France Packing Co.* v. *Dailey*, 166 F. 2d 751, 753-754 (C. A. 3).

[24] *Local 74* v. *National Labor Relations Board*, 181 F. 2d 126, 132, certiorari granted, No. 85, this Term; *National Labor Relations Board* v. *National Maritime Union*, 175 F. 2d 686, 692 (C. A. 2), certiorari denied, 338 U. S. 954; *National Labor Relations Board* v. *Wine, Liquor & Distillery Workers Union*, 178 F. 2d 584, 587-588 (C. A. 2); *Printing Specialties & Paper Converters Union* v. *LeBaron*, 171 F. 2d 331, 334, n. 2 (C. A. 9).

[25] This is particularly evident in that, though not subject to a damage judgment or a Board order, the employees who

in secondary pressure are performing an unlawful act, namely, utilizing a work stoppage to draw a neutral employer into a labor dispute. Paraphrasing the language of this Court in *United States* v. *Women's Sportswear Assn.*, 336 U. S. 460, 464, the immunity of individual employees to suit "cannot be utilized as a cat's-paw to pull" labor organizations' "chestnuts out of the" secondary boycott "fires."

In view of the clear evidence that Congress' reasons for according immunity to individual employees who succumb to inducement to engage in secondary pressure were unrelated to its reasons for declaring union inducement of secondary pressure a wrong, petitioners' argument (Br. 71-72), reduces to the proposition that Congress could not prohibit the inducement unless it also prohibited employees from yielding to it. That contention is squarely refuted by *International Brotherhood of Teamsters* v. *Hanke*, 339 U. S. 470, 479, and *Hughes* v. *Superior Court*, 339 U. S. 460, 468. In *Hughes*, inducement of proportional racial hiring was properly forbidden even though the State does not "forbid the employer to adopt such a quota system of his own free will" (339 U. S., at 468).

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engage in secondary pressure may be vulnerable to discharge or discipline for engaging in unprotected concerted activity (Cf. *United Auto Workers* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 255-257, 260 and n. 15). The Board has not yet had occasion to pass upon this question (See *Deena Artware, Inc.*, 86 NLRB 732, 735, n. 7).

And in *Hanke*, inducement of self-employed persons to maintain certain business hours was properly forbidden even though such persons could voluntarily agree to the proposed arrangement (339 U. S., at 479). In neither case was it unlawful for the persons induced to refuse to cross the picket line. No less than the states, Congress is not required to prohibit the employees' "voluntary acquiescence in the demands of the union in order that it may choose to prohibit the right to secure submission through picketing" (*Hanke* case, 339 U. S., at 479), for Congress may "address itself to the obvious means toward such end" without outlawing its every manifestation (*Hughes* case, 339 U. S., at 468). That Congress, like the states in those cases, in fact chose to illegalize the inducement without making individual submission illegal, is abundantly established.

C. THE REMEDIAL FUNCTION OF SECTION 8(c) IS TO PROTECT UNCOERCIVE SPEECH IN FURTHERANCE OF A LAWFUL OBJECT

Nothing in the history of Section 8 (c) suggests that verbal furtherance of secondary pressure is protected by it; indeed, no legislative discussion of either Section 8 (c) or 8 (b) (4) (A) adverted to the other. This mutual silence as to an interrelation between the two confirms the view that 8 (c) does not except the inducement banned by 8 (b) (4) (A). Contrary to petitioners' contention (Br., p.

73), this result does not work any disparity in "equal freedom to both employers and unions."

Mr. Justice Jackson has said that the Act assures "Free speech on both sides and for every faction on any side of the labor relation * * *. Labor is free to turn its publicity on any labor oppression, substandard wages, employer unfairness, or objectionable working conditions. The employer * * * [is] free to answer, and to turn publicity on the records of the leaders or the unions which seek the confidence of his men."[26] The purpose of Section 8 (c) was to make this clear. Thus, in an organizational campaign, just as a union is free to persuade an employee to join it, so an employer is at liberty to dissuade him from that course, and both are required to desist from an abuse of speech. See 93 Cong. Rec. 4020, 4433-34, in 2 Leg. Hist. 1023, 1201-02. But the uncoercive speech which Section 8 (c) safeguards, whether by employers or labor organizations, is verbal furtherance of a *lawful* end, and not incitement to illegal action expressly prohibited by the Act. Absence of immunity for union inducement of secondary pressure finds its counterpart in absence of immunity for an employer's verbal furtherance of such practices as the creation of a company-dominated labor organization (*National Labor Relations Board* v. *Kropp Forge Co.*, 178 F. 2d 822 (C.A. 7), certiorari

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[26] Mr. Justice Jackson, concurring in *Thomas* v. *Collins*, 323 U.S. 516, 547.

denied, 340 U.S. 810), or the undercutting of a bargaining representative (*May Department Stores* v. *National Labor Relations Board*, 326 U.S. 376, 381-386).[27] "Employers still may not, under the guise of merely exercising their right of free speech, pursue a course of conduct designed to restrain and coerce their employees in the exercise of rights guaranteed by the Act." *National Labor Relations Board* v. *Gate City Cotton Mills*, 167 F. 2d 647, 649 (C.A. 5). Neither may unions pursue an unlawful course of conduct "merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."[28] There is, therefore, no disparity between unions and employers in the application of Section 8 (c).

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[27] So too, it could hardly be argued successfully that Section 8 (c) would protect an employer who incited employees, though without threats or promise of benefit, to commit an assault upon a union organizer or upon union members. Cf. *National Labor Relations Board* v. *New Era Die Co.*, 118 F. 2d 500, 504 (C.A. 3); *National Labor Relations Board* v. *Goodyear Tire & Rubber Co.*, 129 F. 2d 661, 664 (C.A. 5); *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 F. 2d 331, 335 (C.A. 6); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. 2d 780, 792 (C.A. 9), certiorari denied, 312 U.S. 678. In a case decided after the amended Act the Court of Appeals for the Sixth Circuit held that an employer violated the Act by "soliciting" various citizens committees "through the dissemination of anti-union propaganda" to commit acts impinging on employee organizational rights and enforced a Board order prohibiting the employer from engaging in such conduct in the future. *National Labor Relations Board* v. *Salant & Salant, Inc.*, 183 F. 2d 462, enforcing 66 NLRB 24, 44, 111.

[28] *Giboney* v. *Empire Storage and Ice Co.*, 336 U.S. 490, 502.

That Section 8 (c) presupposes the existence of a lawful end, and not the inducement of prohibited conduct, is apparent from the actual problem of employer speech, as it existed before the amendment of the Act, to which Section 8 (c) was addressed. An employer's dissuasion of employee participation in organizational activity involves no unlawful end, for employees may legally forego such participation. The risk entailed by permitting such employer dissuasion is that the privilege may be abused and verbal coercion practiced to realize the lawful end. With this in mind, Congress forbade utterance which contains a "threat of reprisal or force or promise of benefit." It thereby struck the balance between proper and improper speech for a lawful purpose at that point where the utterance assumes overtones of compulsion or favor derived from an attempt, openly or covertly, to bulwark pursuasion by an exertion of economic or other types of coercive power.

It thus affirmed the established principle that the "use of economic power over men and their jobs to influence their action is more than the exercise of freedom of speech. Mere suggestions, when made by one who holds the power of economic coercion in a setting conducive to the exercise of that power, may have the unwarranted effect of exerting a coercive influence to which freedom of speech does not extend." *National Labor Relations Board* v. *Continental Oil Company*, 159 F. 2d 326,

330 (C.A. 10).[20] In consequence, "pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways." *National Labor Relations Board* v. *Virginia Electric & Power Company*, 314 U. S. 469, 477. For although "employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty * * * when to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed," *Thomas* v. *Collins*, 323 U. S. 516, 537-538; *May Department Stores* v. *National Labor Relations Board*, 326 U. S. 376, 386. Thus, in proscribing utterances which contain "threats of violence, intimation of economic reprisal, or offers of benefit" (S. Rep. No. 105, 80th Cong., 1st Sess., 23, in 1 Leg. Hist. 429), Section 8 (c) in its substantive aspect, as explained by Senator Taft, "in effect

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[20] Compare the concurring opinion of Mr. Justice Douglas, in which Mr. Justice Black and Mr. Justice Murphy joined, in *Thomas* v. *Collins*, 323 U.S. 516, 543-544: "No one may be required to obtain a license in order to speak. But once he uses the economic power which he has over other men and their jobs to influence their action, he is doing more than exercising the freedom of speech protected by the First Amendment." The necessity for reconciling the ambivalent character of employer speech has found frequent expression of which the opinion in *Continental Box Co.* v. *National Labor Relations Board*, 113 F. 2d 93, 97 (C.A. 5) is illustrative: "The employer has the right to have and to express a preference for one union over another so long as that expression is the mere expression of opinion in the exercise of free speech and is not *the use of economic power to coerce, compel or buy* the support of the employees for or against a particular labor organization." (Emphasis supplied.)

carries out approximately the present rule laid down by the Supreme Court of the United States. It freezes that rule into law itself * * *." 93 Cong. Record 3837, in 2 Leg. Hist. 1011. *National Labor Relations Board* v. *LaSalle Steel Co.*, 178 F. 2d 829, 834-835 (C.A. 7), certiorari denied, 339 U. S. 963; *National Labor Relations Board* v. *Bailey Co.*, 180 F. 2d 278, 280 (C.A. 6).

Since it has never been the rule of this Court that verbal inducement of unlawful conduct is without more protected speech (*Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 498-502; *supra*, pp. 36-39),[30] Section 8 (c) in embodying "the present rule laid down by the Supreme Court" does not immunize inducement of forbidden conduct. Rather, in insuring "both to employers and labor organizations full freedom to express their views to employees on labor matters" (S. Rep. No. 105, 80th Cong., 1st Sess., 23, in 1 Leg. Hist. 429), the true remedial objective of Section 8 (c) is, assuming a lawful end, to preclude a practice whereby utterances are condemned as coercive, or are considered as evidence, because of the commission of other unfair labor practices, remote in time and unconnected by circumstances to the utterances. Thus, as explained by the House Report, "if an employer

[30] See also, *American Communications Assn.* v. *Douds*, 339 U. S. 382, 394 ("If it is to survive [government] must have power to protect itself against unlawful conduct and, under some circumstances, *against incitements to commit unlawful acts.*") (Emphasis supplied.)

criticizes a union, and later a foreman discharges a union official for gross misconduct," the Board may not "'infer' from what the employer said, *perhaps long before,* that the discharge was for union activity." H. Rep. No. 245, 80th Cong., 1st Sess., 33, in 1 Leg. Hist. 324. (Emphasis supplied.) As stated in the Senate Report, the Board may not hold "speeches by employers to be coercive if the employer was found guilty of some other unfair labor practice, *even though severable or unrelated.*" S. Rep. No. 105, 80th Cong., 1st Sess., 23, in 1 Leg. Hist. 429. (Emphasis supplied.) "The necessity for this change in the law," explained the House Conference Report, was to prevent "using speeches and publications of employers concerning labor organizations and collective bargaining arrangements as evidence, *no matter how irrelevant or immaterial,* that some later act of the employer had an illegal purpose." H. Rep. No. 510, 80th Cong., 1st Sess., 45, in 1 Leg. Hist. 549. (Emphasis supplied.) The ultimate evolution of Section 8 (c) had its origin in the need, as succinctly stated by Senator Ellender, one of the conferees, of precluding the condemnation of "a casual speech," "*no matter how remote or separable,*" as "a part of the pattern of unfair labor practices." 93 Cong. Record 4137, in 2 Leg. Hist. 1066. (Emphasis supplied.) The essence of Section 8 (c), therefore, is to establish in statutory form a rule of relevance in determining whether utterances, as means to a

lawful end, are coercive.[31] It reflects no solicitude for verbal furtherance of an unlawful end.

Petitioners contend, nevertheless, that Section 8 (c) requires that the character of an employer's utterance be determined by looking to the statement alone, without regard to its context; that equality requires a like treatment of union utterances; and that, in this case, looking to the picketing alone, nothing detracts from its innocent nature. Br., pp. 73-78. However, Section 8 (c) does not preclude the consideration of circumstances connected with and relevant to the utterance, in order to determine its meaning. *National Labor Relations Board* v. *Kropp Forge Co.*, 178 F. 2d 822, 827-829 (C.A. 7), certiorari denied, 340 U. S. 810, and cases cited.[32] Whether words import a "threat

[31] Giving effect to the purpose of 8(c), the Board holds that an employer's statements which contain no threat of coercion "do not acquire a coercive character because the [employer] had on another occasion committed unfair labor practices." *Mylan-Sparta Co., Inc.*, 78 NLRB 1144, 1145; *Tygort Sportswear Co.*, 77 NLRB 613, 614; *Bailey Company*, 75 NLRB 941, 942, enforced, 180 F. 2d 278 (C.A. 6). The further objective of Section 8(c), to eliminate the "compulsory audience" doctrine, namely, that an employer's speech is coercive because the employees were ordered by the employer to listen to it (S. Rep. No. 105, 80th Cong., 1st Sess., 23, in 1 Leg. Hist. 429, 93 Cong. Rec. 4137, in 2 Leg. Hist. 1066), has likewise been effected. *Babcock & Wilcox Co.*, 77 NLRB 577, 578.

[32] See also, *National Labor Relations Board* v. *O'Keefe & Merritt Mfg. Co.*, 178 F. 2d 445, 448 (C.A. 9) ("We realize that words are not to be looked at in a vacuum, but in the light of all the circumstances surrounding their utterance."); Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 1, 17 (1947) ("Section 8 (c) itself contains nothing to suggest that in determining the presence of a threat or promise the Board is to shut its eyes to extrinsic circumstances and look only to the naked words. In the labor field, as elsewhere, language takes on its meaning from its context.")

of reprisal or force or promise of benefit," or are directed to an unlawful end, cannot be determined in isolation from the setting in which they are uttered, for, as Mr. Justice Holmes observed, "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."[33]

Consideration of the legislative genesis of Section 8 (c) confirms this view. Section 8 (d) of the House bill provided that:[34]

> * * * the following shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act: (1) Expressing any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, if it does not *by its own terms* threaten force or economic reprisal. [Emphasis supplied.]

Section 8 (c) of the Senate bill provided that:

> The Board shall not base any finding of unfair labor practice upon any statement of views or arguments, either written or oral, if such statement contains *under all the circumstances* no threat, express or implied, of reprisal or force, or offer, express or implied, of benefit * * *.[35] [Emphasis supplied.]

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[33] *Towne* v. *Eisner*, 245 U. S. 418, 425.

[34] H. R. 3020, 80th Cong., 1st Sess., Sec. 8 (d) (1) (April 17, 1947), in 1 Leg. Hist. 183.

[35] H. R. 3020, 80th Cong., 1st Sess., Sec. 8 (c) (May 13, 1947), in 1 Leg. Hist. 242.

Because in conference Section 8 (c) in its final form was avowedly evolved, as is apparent from its wording, from the House provision and in substitution for the Senate provision,[36] the additions to and deletions from the House provision are of the utmost significance in ascertaining the meaning to be ascribed to the final form of the section. Apart from the addition of "promise of benefit" within the category of prohibited utterances, the single significant change in the House provision was the deletion of the phrase "by its own terms." The clear implication of this deletion is that it signifies recession from the view that the meaning of utterances was to be determined by consideration of the bare words alone, without reference to the circumstances surrounding their utterance.

This interpretation is not affected by the failure to include in Section 8 (c) in its final form the phrase, "under all the circumstances," contained in the Senate provision. Explaining the conference agreement, Senator Taft stated that that phrase was deemed "ambiguous and might be susceptible of being construed as approving certain Board decisions which have attempted to circumscribe the right of free speech where 'here were also findings of unfair labor practices' (93 Cong. Rec. 6443, in 2 Leg. Hist. 1541); in short, that the phrase might invite re-introduction of a supposed

[36] H. Conf. Rep. No. 510 80th Cong., 1st Sess., 45, in 1 Leg. Hist. 549; 93 Cong. Record 6443, 6859, in 2 Leg. Hist. 1540-41, 1624.

practice of condemning utterances as coercive because of the commission of other unfair labor practices remote in time and unconnected by circumstances to the utterances (93 Cong. Rec. 6859-60, in 2 Leg. Hist. 1624). During the debate, in response to a query whether statements may be considered in relation to acts to determine meaning, Senator Taft went on to explain, "All these questions involve a consideration of the surrounding circumstances. It would depend upon the facts. * * * There would have to be * * * circumstances to tie in with the act of the employer." 93 Cong. Rec. 6446, in 2 Leg. Hist. 1545. Consequently, where a relevant factual nexus exists between expression and conduct, the meaning of the statement may be ascertained in relation to the circumstances of its utterance.

Thus, Section 8 (c) does not require the Board to consider the picketing in this case in isolation from its objective. Looked at in context, the picketing is inducement of secondary pressure, and to inducement of this character Section 8 (c) affords no immunity.

D. PROHIBITION OF PICKETING IN FURTHERANCE OF SECONDARY PRESSURE INVOLVES NO UNCONSTITUTIONAL ABRIDGMENT OF FREE SPEECH

Contrary to petitioners' contention (Br. pp. 60-68), prohibition of picketing in furtherance of secondary pressure entails no unconstitutional abridgment of free speech. In accord with the

court below (R. 331-332),[37] the Courts of Appeals for the Sixth,[38] Ninth,[39] and Tenth[40] Circuits have upheld the validity of Section 8 (b) (4) (A).[41] As the court below stated (R. 332), "Congress, in the search for a compromise between the conflicting interests of employees in collective bargaining and that of neutrals in avoiding involvement in quarrels not their own, decided to draw a line at secondary boycotts; and the propriety of decision is not for us."

The substantive evil of secondary pressure is on a level of importance with the maintenance of self-employer economic units in *International Brotherhood of Teamsters* v. *Hanke*, 339 U. S. 470, the freedom from coercion in employee selection of bargaining representatives in *Building Service Employees Union* v. *Gazzam*, 339 U. S. 532, the prohibition of pressure to secure proportional employment on racial grounds in *Hughes* v. *Superior Court*, 339 U. S. 460, and the restraint of trade in

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[37] See also, *National Labor Relations Board* v. *Wine, Liquor, & Distillery Workers Union*, 178 F. 2d 584, 587-588 (C.A. 2).

[38] *National Labor Relations Board* v. *Local 74*, 181 F. 2d 126, 132 (C.A. 6), certiorari granted, No. 85, This Term.

[39] *Printing Specialties and Paper Converters Union* v. *LeBaron*, 171 F. 2d 331, 333-335 (C.A. 9).

[40] *National Labor Relations Board* v. *United Brotherhood of Carpenters & Joiners*, 184 F. 2d 60, 62 (C.A. 10), pending on petition for certiorari, No. 387, This Term. *United Brotherhood of Carpenters & Joiners* v. *Sperry*, 170 F. 2d 863, 868-869 (C.A. 10).

[41] The constitutionality of Section 8 (b) (4) (C) (*Douds* v. *Local 1250*, 170 F. 2d 700, 701 (C.A. 2)), and Section 8 (b) (4) (D) (*Los Angeles Building and Construction Trades Council* v. *LeBaron*, 27 LRRM 2184 (C.A. 9, Dec. 8, 1950)) has likewise been sustained.

Giboney v. *Empire Storage and Ice Co.*, 336 U. S. 490. No constitutional difference exists, in terms of governmental appraisal of need and competing interests, between the end to which Congress addressed itself in Section 8 (b) (4) (A) and the ends which were in those cases the subject of state concern. Indeed, *Giboney* is controlling, for except that it carried the label of a different substantive offense, the conduct there "amounted to secondary boycott." L. Hand, C. J., in *United States* v. *Dennis*, 183 F. 2d 201, 210 (C.A. 2), certiorari granted, 340 U. S. 863; see also, *Carpenters & Joiners Union* v. *Ritters' Cafe*, 315 U. S. 722.

Here too, no less than in those cases, the inducement through picketing had a clear and present propensity of working its mischief, as its immediate effect in this case shows (*supra*, pp. 8-9). Verbal furtherance of an unlawful end, where the risk of the materialization of the wrongdoing is substantial and real, as the legislative judgment confirming the facts of industrial life declares it to be here, is outside the protection of the constitutional guarantee of free speech. And "restrictions on particular kinds of utterances, if enacted by a legislature after appraisal of the need, come to this Court 'encased in the armor wrought by prior legislative deliberation.'" *American Communications Association* v. *Douds*, 339 U. S. 382, 401.

Finally, there is no constitutional infirmity in Section 8 (b) (4) (A) by reason of a legislative

judgment resting exclusively upon the absence of an immediate employer-employee relationship as the basis for the statutory curb. Cf. *Building Service Employees Union* v. *Gazzam*, 339 U. S. 532, 539; *International Brotherhood of Teamsters* v. *Hanke*, 339 U. S. 470, 479-480. The existence of secondary pressure in no way turns on the criterion of employment relationship. Thus, in *National Labor Relations Board* v. *International Rice-Milling Co.*, No. 313, this Term, the picketing was primary and permitted, although none of the employees of the primary employer participated in it or left their employ to strike. And in this case, the picketing was secondary, not because of the absence of an employer-employee relationship, but because the inducement was an unrestricted and undifferentiated involvement of employers other than the primary employer.

Petitioners claim (Br. 60-68), that Congress can no more disregard the interdependence of economic interest of those engaged on a common construction project, than it can base legislative judgment upon the absence of an employer-employee relationship. But a construction job is not so indivisible that Congress may not rationally treat separately the participation therein of independent entrepreneurs, each of whom is entitled to protection against secondary pressure. (Board's Brief, *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, No. 393,

this Term, pp. 51-61). The division does exist in fact, and it is as economically significant, at least, as the economic interdependence between the enterprises. Whether to base policy upon the one consideration or the other is a matter for the legislature, and not for the courts applying constitutional limitations.[42]

Petitioners' analysis (Br. 45-51), of the economic interdependence between craftsmen of different trades, employed by separate employers and members of different unions, when working on a common construction project, bears close resemblance to Mr. Justice Brandeis' analysis of the economic interdependence which exists between employees engaged in the same industry, members of the same union, who at different stages of manufacture, and at different plants owned by separate employers, produce, fabricate, and install the same goods. *Duplex Co.* v. *Deering*, 254 U. S. 443, 479; see also *Goldfinger* v. *Feintuch*, 276 N. Y. 281, 11

[42] Except for that part of this argument which relies upon the difference between picketing and speech as such (*supra*, pp. 33-35), this discussion applies equally to all forms of verbal furtherance of secondary pressure, at least where the inducement raises a substantial risk that it will bring about the wrong. An example is the blacklisting of a neutral employer to compel him to cease doing business with a primary employer (*Wadsworth Building Co., Inc.*, 81 NLRB 802, 816, enforced, 184 F. 2d 60, 62 (C. A. 10), pending on petition for certiorari, No. 387, this Term), a type of publication unquestionably subject to restraint when employed to further a secondary boycott (*Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 435-439; and see, *Eastern States Retail Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600, 608-609, 612-613). See also, the discussion of the *Allen-Bradley* case, *supra*, pp. 25-27.

N. E. 2d 910, 913, quoted in our Brief in the *Denver* case, No. 393, pp. 55-56, n. 28. Mr. Justice Brandeis, and some courts subsequently, regarded the "centralization in the control of business" (254 U. S. at 482), and the resultant interrelationship of economic interest between employee groups, as justification for the refusal of a union to permit its members to work on goods produced by non-members. See 254 U. S. at 482-483. The same factors would, in this view, justify the analogous refusal of a union to permit its members to work on a project where non-union employees of other employers were engaged. But the legislative history set forth in our *Denver* Brief, pp. 54-60, shows beyond question that Congress did not regard these factors as sufficient justification for secondary pressure. Pertinent, therefore, is the admonition with which Mr. Justice Brandeis concluded his opinion in the *Duplex* case, 254 U. S. at 488:

> Because I have come to the conclusion that both the common law of a State and a statute of the United States declare the right of industrial combatants to push their struggle to the limits of the justification of self-interest, I do not wish to be understood as attaching any constitutional or moral justification to that right.

IV. THE BOARD'S ORDER IS PROPER

The Board's order in this case requires petitioners and their agents to cease and desist from inducing the employees of Deltorto, or any employer, to

strike or concertedly refuse to perform services in the course of their employment, where an object is to compel Giorgi, or any other employer or person, to cease doing business with Langer (*supra*, pp. 11-12). Petitioners contend that this order is too broad on the ground that "There was no finding by the Board that the acts of petitioners on the Giorgi job will probably be applied on jobs of other employers" (Br., pp. 80-81).[43]

The Board's order is tailored to the precise violation found and does no more than enjoin petitioners from exerting the same kind of economic pressure against Langer through other employers as they exerted upon Langer through Giorgi and Deltorto in the instant case. The order is squarely within the principle that: "To justify an order restraining other violations," in addition to that exact offense found, "it must appear that they bear some resemblance to that which the [offender] has committed or," disjunctively, "that danger of their commission in the future is to be anticipated

[43] Petitioners fortify their contention by reliance upon the Board's dismissal of that part of the complaint alleging their exertion of secondary pressure to keep Langer from performing services on another construction job (R. 262-265). However, Petitioners' action with respect to that incident was to *threaten an employer* that the job would be picketed if Langer performed services there, and it was for the reason that Section 8 (b) (4) (A) does not prohibit inducement directed to an employer that the complaint was dismissed in that respect. Board Br., *National Labor Relations Board* v. *International Rice Milling Co.*, No. 313, this Term, p. 29, n. 20. However, the relevance of this incident for present purposes would be to show that petitioners were interfering with Langer's business wherever it took place, and that a broad order is consequently appropriate.

from the course of his conduct in the past." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 437. See also, *May Department Stores Co.* v. *National Labor Relations Board*, 326 U.S. 376, 386-393; *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37, 51-52. To confine the order to exertion of secondary pressure through Giorgi and Deltorto, and to fail to extend it to other employers, is ineffectual, for it leaves Langer and other employers who do business with him exposed to the very evil already manifested through Giorgi and Deltorto. So long as petitioners' dispute with Langer continues unsettled, or if it recurs after settlement, all who do business with Langer, and not DiGiorgi and Deltorto alone, are potential targets of petitioners' secondary pressure. The order appropriately safeguards them as well as Giorgi and Deltorto, for where "a clear violation of law" is disclosed, "it is not necessary that all of the untraveled roads to that end be left open and that only the worn one be closed." *International Salt Co.* v. *United States*, 332 U.S. 392, 400.

CONCLUSION

For the reasons stated, it is respectfully submitted that the decision below should be affirmed.

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No. 108

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON,
PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 108

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON, PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals (R. 323) is reported at 181 F. (2d) 34. The findings of fact, conclusions of law and order of the Board issued April 12, 1949 (R. 295-300) are reported in 82 N.L.R.B. 1028. The Trial Examiner's intermediate report and recommended order, issued December, 31, 1948, are reported in 82 N.L.R.B. 1028, 1031 *et seq.*

JURISDICTION

The decree of the Court of Appeals was entered on April 6, 1950 (R. 336-337). The petition for a writ of certiorari was filed June 2, 1950 and was granted December 11, 1950.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). The original proceeding to review the order of the Board was filed by the petitioners in the Court of Appeals May 16, 1949 under the provisions of Section 10 (f) of the Act.

QUESTIONS PRESENTED

The following questions are presented:

1. Whether the picketing in this case affected commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

2. Whether the picketing in this case constituted secondary labor activity in violation of Section 8 (b)(4)(A) of the Act.

3. Whether the application of Section 8 (b)(4)(A) to the peaceful picketing in this case infringed on the free speech protection guaranteed by the First Amendment to the Constitution.

4. Whether the peaceful picketing in this case could be evidence of an unfair labor practice under the free speech provisions of Section 8 (c) of the Act.

5. Whether the blanket order granted enforcement by the court below could be issued on the findings of the Board in this case.

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Relations Act of 1947 (61 Stat. 136, 29 U.S.C., Supp. II, 141 *et seq.*) are set forth in Appendix B, *infra*, pages 108 to 115.

STATEMENT

Local Union No. 501 of the International Brotherhood of Electrical Workers, A. F. of L. has jurisdiction for trade union purposes in the electrical trade of the building and construction industry in the County of Westchester, State of New York, and in the Town of Greenwich, County of Fairfield, State of Connecticut. The local has its office in the City of Mount Vernon, County of Westchester, State of New York, within the Southern District of New York (R. 301-302).

Patterson is the agent or business representative of Local Union No. 501, residing in the City of White Plains, County of Westchester, State of New York (*ibid*).

On June 16, 1948, Samuel Langer, residing at Port Chester, Westchester County, New York, filed an amended charge with the National Labor Relations Board, wherein he charged that Local 501, and Patterson had been and are engaged in unfair labor practices within the meaning of Section 8(b) subsections (1)(A) and (4)(A) of the Act (R. 1-3).

On June 24, 1948 the Board, through its Regional Director for the Second Region, issued and served a complaint upon petitioners alleging that:

> "The acts of (petitioners) constitute unfair labor practices affecting commerce within the meaning of Section 8(b) subsections (1)(A) and (4)(A) and Section 2 subsections (6) and (7) of the Act" (R. 9).

In December, 1947, construction commenced on a one

family, private residence in the Town of Greenwich in the State of Connecticut (R. 40).

The Giorgi Construction Company had the general contract for this job, and sublet the carpentry work to Nicholas Deltorto and the electrical work to Samuel Langer, the charging party in this case (R. 39, 40, 41).

The gross amount of Langer's electrical subcontract was $325.00 (R. 53). The amount of the general contract was $15,200, covering the entire cost of the dwelling (R. 40).

All of the electrical work performed by Langer on this job was performed by non-union labor (R. 92).

The testimony taken at the hearings before the Trial Examiner established that Langer at one time operated under a union agreement with Local Union No. 501, but that he breached such agreement by employing non-union labor (R. 92, 93).

A day or two prior to April 16, 1948, Patterson visited the job and informed Deltorto and one of the carpenters that the electrical work was being done by non-union labor (R. 257). Deltorto stated that he did not know of the non-union condition because the electrical work had been performed during a period of a few days when the carpenters were not working on the job (R. 257, 161).

On April 16, Patterson returned to the job. He spoke to Deltorto who claimed ignorance of the non-union character of the electrical work. Patterson thereupon went to his auto, took out a placard reading "This job is unfair to organized labor; I.B.E.W. 501 A.F.L.", donned the placard and began to walk up and down in front of the job (R. 162).

Two carpenters who were then working on the job in behalf of the subcontracting carpenter, Deltorto, shortly after, ceased work and left the job (R. 161).

That evening Patterson telephoned Giorgi, the general contractor, and told him that the job was unfair; that Langer was non-union and that probably no other skilled trades would work on the job (R. 46, 47).

Langer had commenced and completed the "roughing in" electrical work on the dwelling but had some additional work to perform on his $325 contract. There is testimony showing that Langer finished about 60 per cent of the electrical work for which he had contracted and that approximately 40 per cent remained to be performed (R. 248; 53).

The carpenters working on the job were not ordered off the job by Patterson or any other person.

The picketing was entirely peaceful.

I

The Trial Examiner's Intermediate Report and Recommended Order

The Trial Examiner found that Samuel Langer was engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act (R. 283). He conceded that the value of materials used and intended to be used by Langer on the house was not large (R. 248), but based the findings on the conclusion that "numerous strands in the web of commerce, several of which crossed state lines, were interlaced in the construction of the Greenwich house"

(R. 251). There was no direct evidence on the amount of materials used or allocated for use in the performance of the $325.00 electrical contract (R. 248 fn. 12). The Trial Examiner relied on the interstate status of the companies supplying Langer (R. 249-250), Langer's total annual business of $24,443.96 and the value of materials secured from points outside the State of New York by Langer in connection with his general business (R. 248). Similar reasoning was applied to the status of Giorgi and Deltorto (R. 246-247).

The Trial Examiner recommended the dismissal of the allegations in the complaint alleging violation of Section 8(b)(1)(A) of the Act together with the allegations in the complaint alleging that respondents threatened to induce and encourage employees of other employers to engage in violation of Section 8(b)(4)(A) of the Act (R. 260-265; 283).

He also recommended dismissal of the main allegation in the complaint alleging violation of Section 8(b)(4)(A) with respect to the Greenwich job on his finding of fact that Patterson's picketing on April 16, 1948 was an expression of views, argument or opinion and the dissemination thereof in written and visual form, containing no threat of reprisal or force or promise of benefit and that such picketing by virtue of the protection of Section 8(c) did not constitute an unfair labor practice (R. 281). The Trial Examiner stressed the fact that the picketing was not a joint enterprise and the evidence revealed no covenant between the electrical worker and the carpenter either directly or through the Westchester Building Trades Council requiring each to respect the other's picket line and concluded that the implicit threat and promise is of the same general nature which it can be

argued is embodied in every appeal for assistance by any person or group sharing a common interest with any other person or group (R. 280-281).

II

The Board's Decision and Order

The Board divided three to two on the question of whether jurisdiction should be asserted. Two of the members of the majority were of the view that the Board had "plenary power" to act in the case. The third member of the majority stated he would exercise jurisdiction because the specific controversy before the Board arose out of an interstate transaction. The two dissenting members of the Board stated that: "We believe the operations involved in this case constitute an essentially local enterprise with only the most remote effect upon commerce. Consequently, we do not desire to exercise our discretion to assert jurisdiction."

The majority of the Board ordered that the complaint be dismissed insofar as it alleged: "(1) that the respondents (petitioners herein) violated Section 8(b)(4)(A) by threatening to induce or encourage employees of employers other than Nicholas Deltorto or Giorgi Construction Company to strike or refuse to perform service in order to force said other employers to cease doing business with Samuel Langer and (2) that the respondents (petitioners herein) violated Section 8(b)(4)(A) of the Act.".

The majority of the Board ruled, however, that Section 8(c) does not immunize peaceful picketing under the circumstances of this case and held that petitioners had violated

Section 8(b)(4)(A) of the Act by picketing the Greenwich job on April 16, 1948.

III

The Decision in the Court Below

The Court of Appeals affirmed the order of the Board in an opinion issued February 24, 1950 by a divided vote of two to one and entered its decree on April 6, 1950. The Court stayed its order pending the filing of the petition for writ of certiorari by an order dated April 17, 1950, and by a further order dated May 15, 1950.

The Court ruled that the appeal must be decided on the merits because insignificant as Patterson's acts were, they were enough to satisfy the jurisdictional demands of the Act. The Court relied upon the fact that Langer had to go from New York to Connecticut in order to perform his part of the work, small though it was and that he had to bring materials from New York for use on the job. There was also reliance upon Langer's general business and the fact that Giorgi's headquarters were also in New York, that he had to bring materials from New York and that his general business extended into other states in substantial amounts.

The Court held that Patterson's purpose was to force Giorgi to "cease doing business with Langer" and that a distinction could not be made on the issue of the secondary boycott as between a third person engaged in a common venture with the employer and a third person dealing independently with the employer. In particular, the Court in-

terpreted the phrase "doing business" as ordinarily covering any business which the third party is free to discontinue regardless of whether he is merely supplying the material to the employer or has subcontracted with the employer to perform part of the work which the third party has himself contracted to do.

The Court conceded that "certain situations are, however, to be distinguished." Three types of cases were listed: (1) Where the work of the employer may be so enmeshed with that of the third party that it is impossible to picket one without picketing the other; (2) A strike which has for its purpose a dual pressure on the third person and the employer; (3) Where the third person is only a disguise for the employer.

The dissenting Judge was of the opinion that the picketing should be held permissible and enforcement of the order refused on the ground that it did not constitute a secondary boycott within the meaning of Section 8(b)(4)(A) of the Act. He relied upon the general legislative history with respect to the intent of Section 8(b)(4)(A), as illustrated by Senator Taft's statement concerning this section: "This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and an employee" (93 Daily Congressional Record 4323; N.L.R.B., Legislative History, L.M.R.A., 1106).

He pointed out that the immediate cause of the labor dispute in the instant case was Giorgi's act of bringing on to the Greenwich job—which he controls—a non-union electrical subcontractor. It was his opinion that Giorgi's act of giving

Langer the contract is the very heart of the matter; and if the Union is barred from reaching Giorgi at all, its traditional weapons are blunted and perhaps destroyed. He considered that it is legitimate union activity within the scope of the Act for Patterson to set a picket line which would reach Giorgi within its direct orbit and Deltorto as enmeshed with Giorgi.

The dissenting Judge emphasized the inconsistency of the instant decision with the decisions of the National Labor Relations Board in *Ryan Construction Corporation*, 85 N.L.R.B. No. 76 and *Pure Oil Co.*, 84 N.L.R.B. No. 38. He also relied upon a decision of this court in *Carpenters and Joiners Union of America, Local No. 213* v. *Ritter's Cafe*, 315 U. S. 722, 728; *Douds* v. *Metropolitan Federation of Architects, Engineers, Chemists Local 231*, 75 F. Supp. 672 (S. D. N. Y.) as recognized by *N.L.R.B.* v. *Liquor and Distillery Workers Union*, 178 F. 2nd 584 (2nd Cir.), and *Mills* v. *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada*, 83 F. Supp. 240, 245 (W. D. Mo.).

The Court further held that Section 8(c) does not immunize the conduct which was the subject of the Board's action and stated its opinion that Section 8(c) applies, if at all, to cases where discursive argument accompanies language of inducement to act in violation of the statute. The Court also held that the inducement of individuals to withdraw from their employment was as much a violation not protected by Section 8(c) as inducement of a union to call a strike in violation of Section 8(b)(4)(A). The Court

further held that Section 8(b)(4)(A) and Section 8(c), as interpreted by it, did not violate the First Amendment to the United States Constitution.

SUMMARY OF ARGUMENT

I

Legal determinations of effect on commerce are properly based on considerations of practical judgment rather than formulas or verbal chains of reasoning. *United States* v. *Yellow Cab Company*, 332 U. S. 218, 231; *10 East 40th Street Building, Inc.* v. *Callus*, 325 U. S. 578, 584.

The same administrative agency which asserted jurisdiction in the instant case on April 12, 1949, by a divided vote of three to two would refuse jurisdiction unanimously if the case were to arise today. Indeed, under the rules announced by the Board in October, 1950, a contractor engaged in the original construction of residences within the boundaries of a state would not become subject to the jurisdiction of the Board unless he received annually at least $500,000 of materials directly across state lines or $1,000,000 of materials indirectly across state lines (*infra*, pp. 26-27). The factor of doing business across state lines cannot be made the sole basis for the exercise of jurisdiction under the present rules of the Board, unless such business amounts to not less than $25,000 per annum (*ibid*). The development of actual experience by the Board with an industry which has not been the subject of its consideration under the Wagner Act is a proper index to the intent of Congress on the scope of the commerce clause of the Act. *Cf. U. S.* v. *American Trans-*

port Co., 327 U. S. 437, 454-455, 458-460; *Bunte Brothers* v. *Federal Trade Commission*, 312 U. S. 349, 351-353.

The facts and findings in this case bring it within the category of cases which are too remote in their effect on commerce to be subject to the Act. Giorgi's annual business of $60,000 and his purchases of goods from interstate suppliers are not relevant factors because the picketing was directed against Giorgi at the Greenwich, Connecticut, job site and not at his place of business or his general business. The same is true of Langer's annual business of less than $25,000. The Board did not find the picketing was directed against Langer's place of business or his general business. Upon analysis, it appears that the Board's majority opinion was limited to the facts on the particular job site. With respect to these facts, it is contended that the out-of-state residence of Langer and Giorgi did not transform original construction into commerce. *Murphey* v. *Reed*, 335 U. S. 868; *Barbe* v. *Cummins Construction Co.*, 49 F. Supp. 168 (D. C., Md.), affirmed 138 F. (2d) 667 (4th Cir.). Even if the flow of materials used or to be used were affected by the stoppage of a few days, the amounts involved bring the case within the *de minimis* rule. *Groneman* v. *I.B.E.W. Local No. 354*, 177 F. (2d) 995.

II

The interpretation of Section 8(b)(4)(A) in the case of an alleged secondary boycott, as in the instant case, raises two questions: first, whether the facts show any secondary labor activity, and second, if so, whether the secondary activity is allowable as an incidental effect of allowable direct

labor activity, such as strikes for the improvement of wages, hours and working conditions or for recognition.

The broad language of Section 8(b)(4)(A) prohibiting strikes and other labor activity "an object" of which is "forcing or requiring . . . any employer or other person . . . to cease doing business with any other person" must be read in the light of Senator Taft's statement in the course of debate on the bill that:

> "This provision (Section 8(b)(4)(A)) makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employee." (93 Daily Cong. Rec. 4323; N.L.R.B., Legislative History, L.M.R.A., 1106.)

The facts in this case do not fall within the above definition of a secondary boycott prohibited by Section 8(b)(4)(A). Local No. 501 of the I.B.E.W. was a party to a primary labor dispute with Giorgi because of his employment of non-union electricians on the job site. The economic realities of the building and construction industry make the relationship of a journeyman electrician to his particular employer on a specific job of insignificant importance in comparison with the journeyman's relationship to labor conditions in the area. Wages are determined on an area basis rather than by the collective bargaining relationship with a particular employer on a particular job. The shifting nature of employment in the building and construction industry is such that employees work on a particular job for a particular employer for only a short time and building trades employees shift constantly from job to job and from

employer to employer. Thus, Local No. 501 had a direct economic interest in the non-union condition on the job site in this case and their assertion of that interest against Giorgi was primary, not secondary, labor activity. Deltorto's employees in the carpentry trade also had such an interest because their rates of pay would be affected if non-union conditions forced down the area wage rates for electricians. Also, the carpenters' conditions of employment, other than wages, might deteriorate on this job and, indeed the carpenters might be replaced by non-union men.

Congress did not intend that Section 8(b)(4)(A) prohibit any labor activities directed against the business of an employer who is directly involved in the labor dispute. The direct picketing of Giorgi was, therefore, allowable because it did not constitute a secondary boycott prohibited by Section 8(b)(4)(A).

Local No. 501 of the I.B.E.W. also had a direct labor dispute with Langer. He had breached his agreement with the local union. It was, therefore, allowable to picket for the purpose of inducing his employees to quit and, thereby, induce Langer to return to his previous status under the agreement as an employer whose wage rates were determined by collective bargaining rather than by his bargaining with individual employees.

The absence of Langer's employees from the job at the time of the picketing does not vary this conclusion under the facts of the building and construction industry. Picketing the job assures public notice to the non-union employees whether they are on or off the job. The non-union employer learned of the picketing although he was not on the job at the time of the picketing. It is reasonable to as-

sume they would also hear of it. If picketing can be engaged in on a building job in a primary labor dispute only when the non-union employees are present, the work can be arranged for after nightfall, thus reducing the picketing to a nullity.

The effect of the picketing on Deltorto's employees was, thus, a collateral and allowable effect of the direct picketing of Langer. Similarly, the direct picketing of Giorgi would have, as an allowable and collateral effect, persuasion of Deltorto's employees to quit even if he were a truly secondary party.

III

The right of free speech protected by the First Amendment cannot be abridged constitutionally by a policy of Congress, if such it was, to preserve business relationships from disruption by labor unions when more than one employer is involved and the relationship between such employers is deemed separate under the common law.

If this were the congressional policy underlying Section 8(b)(4)(A), it would be as arbitrary as the line sought to be drawn by the Illinois courts limiting allowable labor disputes to an employer and his employees, which was struck down by this Court in *A.F.L.* v. *Swing*, 312 U. S. 321. See *Carpenters and Joiners Union of America, Local No. 213* v. *Ritter's Cafe*, 315 U. S. 722. The authority of these cases has not been diminished by recent decisions. *Teamsters* v. *Hanke*, 339 U. S. 470, 479-480.

IV

In any event, there was no evidence upon which the

Board's findings could be based under Section 8(c) of the Act which provides that:

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

The trial examiner found the peaceful picketing in this case, as a matter of fact, satisfied the above requirements of Section 8(c) (R. 281). The Board did not disturb this finding (R. 296, 297) and the court below assumed that such was the action of the Board (R. 328). The conclusion that there was no proof of violation should, therefore, follow.

The Board has stated in the *Wadsworth* case, 81 N.L.R.B. 802, upon which it relied in the instant case, that there is a conflict between Section 8(c) and Section 8(b)(4)(A) and it believes it more consistent with congressional intent to permit Section 8(b)(4)(A) to prevail. The conflict does not appear to be between the two sections of the Act; it is more in the nature of a conflict between Section 8(c) and some statements of Congressmen made in the course of the legislation.

If the two sections of the Act can be read together reasonably without nullifying either, that would seem to be more consistent with the usual principles of statutory construction than the direct nullification of Section 8(c).

This reconciliation of the two sections can be accom-

plished by interpreting Section 8(b)(4)(A) as applicable to strikes for illegal secondary objects, indirect means of inducing or encouraging strikes utilized by unions having the power to call strikes and picketing by a union not empowered to call a strike when accompanied by violence, threats of violence or offers of monetary or other reward. If Section 8(c) were so interpreted, the picketing in this case would be unavailable as a basis for a finding in this case because it was entirely peaceful and the electricians union had no power over the carpenters union or its members.

ARGUMENT

I

The Picketing of the Dwelling House Construction Job In This Case Did Not Affect Commerce

A. The Determination of Whether Commerce Is Affected Must Be Based on Practical Judgment

This Court has made it clear that "interstate commerce is an intensely practical concept drawn from the normal and accepted course of business." *United States* v. *Yellow Cab Company*, 332 U. S. 218, 231. Congress has the power to control activities which have "such a *close and substantial* relation to interstate commerce that their control is *essential or appropriate* to protect that commerce from burdens and obstructions" (italics supplied). *N.L.R.B.* v. *Jones and Laughlin Steel Corporation*, 301 U. S. 1, 37.

The question of whether commerce is affected in a particular case cannot be determined under these standards by

application of verbal chains of reasoning. It is also clear that there are no pat formulas which automatically dispose of the issue:

> "The attempt to achieve a form of words that would avoid an exercise of judgment that a particular occupation is more in the nature of a local business than not, is merely to be content with formulas of illusory certainty . . . we cannot escape the duty of drawing lines." *10 East 40th Street Building, Inc.* v. *Callus*, 325 U. S. 578, 584.

It is of course true that activities which may be intrastate in character, when separately considered, are nevertheless sufficiently related to commerce to come within the scope of the commerce clause in Labor-Management Relations Act of 1947. The required close and substantial relationship to commerce must be proved, however, in each case for no finding has been made by the Congress that all unfair labor practices affect commerce. *N.L.R.B.* v. *Jones and Laughlin*, *supra*, at pp. 31, 32.

The establishment of a substantial rather than a verbal test of relationship to commerce proceeds not alone from the intrinsic need of giving the words "interstate commerce" and "affecting commerce" a real rather than an artificial meaning but also from the large scale consequences which determinations of "commerce" register upon the State-Federal system of government.

This Court expressed a caution on this latter point in its

earliest decision upholding the enactment of the National Labor Relations Act under the commerce power:

> "Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree." *N.L.R.B. v. Jones and Laughlin Steel Co., supra*, 37.

The caution was repeated in the more recent case of *Polish National Alliance* v. *N.L.R.B.*, 322 U. S. 643, 650:

> "The interpenetrations of modern society have not wiped out state lines. It is not for us to make inroads upon our federal system either by indifference to its maintenance or excessive regard for the unifying forces of modern technology. Scholastic reasoning may prove that no activity is isolated within the boundaries of a single state, but that cannot justify absorption of legislative power by the United States over every activity."

B. The Picketing in the Circumstances of the Instant Case Did Not Affect Commerce Under Any Test of the Scope of Judicial Review of the Evidence

The facts in the instant case bring it within the categories of activities, which when separately considered, are of intra-

state character. On April 16, 1948, Patterson, the business representative of I.B.E.W. Local 501, walked carrying a picket sign in front of a partly completed small private dwelling house at Greenwich, Connecticut, which had been under construction approximately four months (R. 101, 40). Two carpenters, who were then at work on the house, left the job (R. 183). Work resumed in several days (R. 165). Langer, the non-union electrical contractor, was replaced by a union electrical contractor (R. 46, 77, 78).

It is conceded that the inquiry whether the picketing affected commerce cannot be limited to the above facts. It is respectfully submitted, however, that the necessary effect on commerce cannot be proved by the mere formulation of relationships of the picketing to aspects of commerce. The relationships must be examined on the facts and findings in this record to determine whether they are substantial.

1. General Status of Giorgi.

Among the factors relied on by the court below in deciding the picketing affected commerce was the conclusion that Giorgi, the general contractor on the job, had a business which extended into other states in substantial amount. The record showed that Giorgi's total annual business was $60,000 in 1947 and he testified that "a part" of this total represented work performed outside the State of New York where he had his headquarters (R. 38, 39).

The Court of Appeals for the District of Columbia has pointed out, however, that the picketing cases in the building trades present a jurisdictional situation which are dis-

similar from any of the cases heretofore decided by the Supreme Court. *Denver Building and Construction Trades Council et al* v. *N.L.R.B.* 18 Labor Cases 65,949; decided September 1, 1950. "In each, as illustrated by the *Fainblatt* case, the unfair labor practice occurred at a place of business where interstate commerce was engaged in though the effect of the forbidden practice was felt first on a local activity such as production or manufacturing (at pp. 78, 156). The impact of the picketing in the instant case is not at Giorgi's place of business but at the job site. Under the facts and the findings of this case, the effect of the picketing is necessarily limited, insofar as Giorgi is concerned, to his activities at the Greenwich, Connecticut, job and his other business, whatever its correct status under the commerce clause of the Act, is not involved in any way.

2. General Status of Langer.

The same is true of Langer's general business on the findings of the administrative agency in this case. The court below relied upon the conclusions that "his general business required him continuously to import substantial amounts of material from other states into New York, and he did a substantial amount of work in Connecticut in addition to the job in question, as well as work for large contractors whose own interstate activities were very large indeed." *I.B.E.W. Local 501* v. *N.L.R.B.*, 181 F. (2d) 34, 36-37.

The facts in the record showed that Langer's total volume of business from July 1, 1947, to July 1, 1948, was $24,443.96 (R. 57), that the value of material purchased by him during this year from concerns located outside the State of New

York was $5,095.66 (R. 61), that the value of work performed outside the State of New York for this period by Langer amounted to $8,402.52 (*ibid*), and that the value of work performed by him for industrial plants was $4,814.33 (R. 57). In this latter connection, Langer's work in 1947 appeared to consist of installation and repair work for a manufacturer of electrical fixtures (R. 141), a manufacturer of surgical instruments and appliances (R. 144-145) and a toy manufacturer (R. 151-152).

Whatever the status of Langer's general business on these facts may be under the commerce clause of the Act, there is no finding by the Board that the picketing of respondents was directed against such general business. *Cf. May Dept. Stores* v. *N.L.R.B.*, 326 U. S. 376, 392. Indeed, the Board unanimously dismissed the complaint, "insofar as it alleges that the Respondent violated Section 8(b)(4)(A) by threatening to induce or encourage employees of employers other than Nicholas Deltorto or Giorgi Construction Company to strike or refuse to perform services in order to force said other employers to cease doing business with Samuel Langer." (R. 298-299, 295). If there is a question as to whether the Board based its administrative finding on the facts of this picketing case or on the isolated instances of conversations Patterson had with others about Langer's non-union status, that question is resolved by an examination of the Board's decision.

Two members of the Board considered the dispute too remote in its effect on commerce to warrant the exercise of jurisdiction and two members were of the view that the Board has "plenary power to act in this case and they would

exercise jurisdiction for the reasons given in the *Watson* case" (R. 296, 299). The decisive vote was cast by the Chairman who stated "He would exercise jurisdiction here because the very controversy before the Board arose out of an interstate transaction, in which New York contractors were engaged in the construction of a residence in the State of Connecticut." (R. 296.)

The question of the effect of the picketing, therefore, turns on the events and circumstances at the site of the construction job.

3. The Job Site.

The factor of the so-called "interstate transaction" relied on by the Chairman of the Board appears on analysis to be limited to the fact that Giorgi and Langer each traveled from their respective headquarters in Port Chester, New York to Greenwich, Connecticut, to supervise their employees. The court below gave weight to this factor (R. 325-326). This Court has ruled, however, that original construction is not commerce. *Murphey* v. *Reed*, 335 U. S. 865. The out-of-state residence of contractors or employees on the job cannot transform original construction into commerce. If this proposition were valid, the Fair Labor Standards Act would apply to every employee in the construction industry who crosses a state line to reach his place of work. It has, however, been held otherwise. *Barbe* v. *Cummins Construction Co.*, 49 F. Supp. 168 (D. C., Md.), affirmed 138 F. (2d) 667 (4th Cir.)

The court below also relied upon the factor of inflow of

materials to the particular construction job. It pointed out that Langer had to bring the materials which he used upon the job from New York and that Giorgi likewise brought the materials which he used upon the job from New York (R. 325, 326).

The record shows that the construction of the house had been under way for approximately four months at the time of the picketing (R. 40, 180). There is no direct evidence in the record as to whether Langer's future work required any materials or that such materials had not already been delivered to the job. There is an equal lack of evidence on this point as to the masonry materials used by Giorgi or as to any other materials, including lumber.

There was, therefore, no evidence to support a finding that the picketing in this case did affect the flow of materials to this job.

Even assuming that such materials were in the process of delivery, there is a question as to whether the *de minimis* rule should not be applied to the case because of the small amounts involved. There is no direct evidence in the record as to the value of all the materials which Langer was to make available for the job. The trial examiner assumed that the proportion of materials to the total cost of electrical work was one-third of the contract price (R. 248, fn. 12). The total value of Langer's contract was $325.00 (R. 53). Accordingly, if estimating is a proper method of proof, the cost of materials used or to be used by Langer would have been approximately $110.00. Masonry supplies were required in the amount of approximately $1,800.00 (R. 54).

There was no evidence on the cost of lumber and whatever lumber was used on the job was secured from a lumber yard located in Connecticut (R. 126, 129).

This Court has stated that the *de minimis* doctrine is applicable to the question of jurisdiction arising under the National Labor Relations Act. *National Labor Relations Board* v. *Fainblatt*, 306, U. S. 601, 607. See *Mabee* v. *White Plains Publishing Co.*, 327 U. S. 178, 181.

The Court of Appeals for the Tenth Circuit applied the *de minimis* doctrine to exclude a picketing case from the scope of the Labor-Management Relations Act of 1947. *Groneman* v. *I.B.E.W. Local 354*, 177 Fed. (2d) 995. There, the building involved was an elementary school of much larger size than the private dwelling house in this job. The Court assumed that there was an interruption in the direct inflow of materials to the job in the amount of $6,000.00. The Court held, however, that "the impact of this labor dispute upon commerce, in any event, is so trifling and microscopic as to bring it within the above pronouncement by the Supreme Court [in the *Fainblatt* case] and requires the application of the *de minimis* doctrine." (*Ibid* at pp. 997-998).

There is no basis for distinguishing the *Groneman* case on the assumption that there the dispute involved only one incident. The facts and surrounding circumstances of the picketing occasioned by the non-union condition were the same as in the instant case and, as has been pointed out above, the evaluation of the different positions of the Board members in the instant case shows that the decision to hold the dispute covered by the Act was based on the so-called "interstate" aspects of this particular dispute.

The consequences of a ruling that the *de minimis* doctrine has no application to a situation similar to that involved in the present case are apparent. The scope of federal power would be extended to a point which would eliminate whatever limited powers the states may be said to have at the present time. This result would not seem to be consistent with the position taken by this Court, expressed as dictum, it is true, that there must be some area of exclusive power in the states to preserve the fundamentals of our dual system of government.

The fact is, moreover, that under the present rulings of the Board it would not take jurisdiction of the instant case if the case were to arise today. On October 6, 1950, the National Labor Relations Board issued a general statement on the scope of its jurisdiction based upon eight decided cases. The Board's statement reads as follows:

> "The plan that emerged from the eight decisions made it clear that whenever federal jurisdiction exists under the statute and the interstate commerce clause of the Constitution, the Board will exercise jurisdiction over:
>
> "1. Instrumentalities and channels of interstate and foreign commerce (for example, radio systems).
>
> "2. Public utility and transit systems.
>
> "3. Establishments which operate as integral parts of a multi-state enterprise (for example, chain stores, and branch divisions of national or interstate organizations).

"4. Enterprises which produce or handle goods destined for out-of-state shipment, or performing services outside a state, if the goods or services are valued at $25,000 a year.

"5. Enterprises which furnish services or materials necessary to the operation of enterprises falling into categories 1, 2 and 4 above, provided such goods or services are valued at $50,000 a year.

"6. Any other enterprise which has:

(a) a direct inflow of material valued at $50,000 a year; or

(b) an indirect inflow of material valued at $1,000,000 a year; or

(c) a combination inflow or outflow of goods which add up to at least a total of '100 per cent' of the amounts required in items 4, 5, 6(a) and (b) above.

"7. Establishments substantially affecting national defense." *Release of National Labor Relations Board*, dated Friday, October 6, 1950, titled: *"N.L.R.B. Clarifies & Defines Areas in which it will and will not exercise jurisdiction."*

The scope of present rulings of the Board have limited the effect of the factor of inflow of materials. Thus the Board will not assert jurisdiction over a contractor in the building trades who is engaged solely in original construction within the boundaries of a state unless he received materials valued in the amount of $1,000,000 a year from outside the state

by indirect inflow or unless he received a direct inflow of material valued at $500,000 a year. Even the contractor who performs services across state lines would be excluded unless such services are valued at $25,000 a year. This latter rule would exclude Langer since his annual out-of-state business was less than $8,500 (R. 61) and he would certainly not come within the amounts prescribed with respect to direct or indirect inflow of out-of-state material or the other standards now applied by the Board.

As pointed out above, Giorgi's general status is irrelevant because the picketing could not on this record affect his general business in any way. Moreover, there is no evidence as to the amount of out-of-state business performed by Giorgi (R. 38, 39).

It may be contended by the Board that the present rulings of the Board do not have any bearing on the instant case because they represent an exercise of administrative discretion rather than decisions of law. It is respectfully submitted that this contention overlooks the basis upon which rulings of law on the scope of commerce are made. The pronouncements of this Court show conclusively that the rulings of law on commerce are based upon practical judgment—not legal formulas. It is difficult to distinguish the type of differences in practical judgment which are available to draw a line between rulings of law and administrative judgments that commerce is affected in too remote a sense to warrant the exercise of jurisdiction.

The record of Board actions on this subject shows a development of experience in an industry which had not here-

tofore been a subject of jurisdiction by the Board. In the *Watson* case the majority of the Board stressed the fact that its ruling of coverage was the basis of practical considerations. 80 N.L.R.B. 533, 534 to 536, November 22, 1948. In the *Mentzer* case, decided March 24, 1949, the Board declined to assert jurisdiction as to a complaint alleging violation of the union security provisions of the Labor-Management Relations Act of 1947 although the plastering contractor there involved had an annual business of $33,000 and was working on an apartment house valued at more than $175,000. (82 N.L.R.B. 389.) One of the three members of the Board who made up the necessary majority stated that he was still of the view that the Board had no choice but to proceed with such cases if the complaint alleged a violation of Section 8(b)(4)(A) of the Act. (*Ibid* at p. 392.) This latter position was dropped in the ruling of the Board in the instant case (April 12, 1949) where the member stated that in the future he would be governed by the view that the Board is free to exercise its jurisdiction or not to take jurisdiction in all cases and that Section 8(b)(4)(A) violations were no exception to that rule (R. 296). On July 19, 1949, the Board, by unanimous decision, declined to assert jurisdiction in the case of *Petredis and Fryer* where a non-union condition had occasioned the picketing of an $80,000 drive-in theatre at Bridgeville, Pa. (85 N.L.R.B. 241, 242, fn. 6).

The rulings of October 6, 1950, *supra*, which have been issued by the Board on the scope of its jurisdiction have been more recently amplified in the matter of *Hotel Association of St. Louis*, (92 N.L.R.B. No. 215, January 19, 1951) wherein the Board declined to assert jurisdiction in a rep-

resentation proceeding involving an association of twenty-two hotels located in St. Louis.

The course of the decisions of the National Labor Relations Board which have been related above demonstrates that the Board has found its initial position of "plenary authority" in the field of commerce to be impractical under the provisions of this statute and the facts of the industries subject to its regulation. We submit that there is nothing to bar this Court from taking actual history into account in determining the intent of the Congress as to the scope of the commerce clause. (See *U. S.* v. *American Transport Co.*, 327 U. S. 437, 454-455, 458-460 and *Bunte Brothers* v. *Federal Trade Commission*, 312 U. S. 349, 351-353). See also Twelfth Intermediate Report of the Committee on Expenditures in the Executive Department, 80th Congress, 2nd Session, House Report No. 2050, May 26, 1948, in which a congressional committee, relying upon a unanimous report of the joint subcommittees of the House Committee on Expenditures in the Executive Department and the House Committee on Education and Labor, took vigorous exception to the broad interpretations of the General Counsel of the Board and the Board on the scope of the commerce clause in the Act and concluded that such interpretations were not consistent with the original intent of the Congress.

We do not contend that the practical judgments of the National Labor Relations Board cannot be the subject of difference of opinion, nor do we contend that the language of the Act precludes the Board from an administrative exercise of discretion to decline to assert jurisdiction. We submit, however, that the facts of the instant case are so

limited and so well within the scope of the present rulings of the Board excluding small cases from the application of its jurisdiction, that a practical judgment in this case requires the conclusion that the Congress did not intend to cover labor disputes of the local character here involved under the commerce clause of the Act.

The contrary view produces an anomalous result. Section 303(a) of the Act gives private parties the right to sue for damages in the Federal District Courts for the same acts which are the subject of administrative action by the National Labor Relations Board under Section 8(b)(4)(A). Accordingly, cases which are not deemed sufficiently close in their relationship to commerce to warrant the administrative action of the specialized agency established by the Congress can nevertheless be brought to the Federal judicial system for decision.

II

Section 8(b)(4)(A) of the Act Prohibits Secondary Labor Activity and Does Not Apply to the Picketing in This Case Which Constituted Primary Labor Activity

A. Section 8(b)(4)(A) Does Not Prohibit Primary Labor Activity

A careful examination of the decisions of the four Courts of Appeals which are before this Court shows that each of the Courts proceeded upon the assumption that Section 8(b)(4)(A) does not prohibit primary labor action. The Court of Appeals for the District of Columbia stated ex-

plicitly that "the provisions of Section 8(b)(4)(A) here involved are directed against secondary boycotts and secondary strikes. The words 'cease doing business with any other person' must be read with this in mind and interpreted in their setting. Not every strike which might be construed to have as an object the forcing of someone to 'cease doing business' with someone else is prohibited." *Denver Building and Construction Trades Council et al* v. *N.L.R.B. supra,* at p. 78,160. The Court of Appeals for the Second Circuit stated the question in the case in terms of "secondary boycott" and defined that phrase as follows: "The gravamen of a secondary boycott is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it. Its aim is to compel him to stop business with the employer in the hope that this will induce the employer to give in to his employees' demands." *I.B.E.W. Local No. 501 et al* v. *N.L.R.B., supra,* p. 37. The Court of Appeals for the Fifth Circuit made general statements concerning the applicability of the statute "without resort to any distinction between primary and secondary activities" but when it analyzed the facts in relation to the statute it concluded that "these activities became *secondary* when the strikers attempted to induce and encourage the employees of this *neutral employer* Sales House." (italics supplied). *International Rice Milling Company, Inc.* v. *N.L.R.B.*, 183 F. (2d) 21, 26. It should also be noted that the Court of Appeals for the Fifth Circuit defined the prohibited offense in the same words used by the Court of Appeals for the Second Circuit in defining the term "secondary boycott" in the previously decided case

of *I.B.E.W. Local No. 501, et al* v. *N.L.R.B.* (*ibid*) The Court of Appeals for the Sixth Circuit, in its consideration of the questions of commerce and the constitutional issues raised by the First, Fifth, Thirteenth and Fifteenth Amendments referred to Section 8(b)(4)(A) of the Act as prohibiting secondary boycotts. *N.L.R.B.* v. *Local No. 74, United Brotherhood of Carpenters, et al.*, 181 F. (2d) 126, 132.

The language of the Act and its legislative history support these judicial views. Section 13 provides that "Nothing in this Act, except as specifically provided for herein, shall be construed as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

The legislative history of the Act supports the obvious conclusion that stringent as the Labor-Management Relations Act of 1947 was intended to be in its limitation of the rights of labor, the Congress nevertheless did not intend to take away from labor the right to engage in direct strikes for economic or recognition purpo es. Senator Taft drew a line of distinction between strikes "for justifiable purposes" and strikes for "wholly illegal and improper purposes." Indeed, he made it clear that "secondary boycotts" are to be distinguished from "strikes for higher wages, and hours and better working conditions, which are entirely proper and which through this bill are recognized as completely proper strikes." (93 Cong. Rec. 3834). He also stated that:

> 'Basically, I believe that the Committee feels, almost unanimously that the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based upon that proposi-

tion. That means that we recognize freedom to strike when the question involved is the improvement of wages, hours and working conditions, when a contract has expired and neither side is bound by a contract....

"So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. *We have done nothing to outlaw strikes for basic wages, hours and working conditions* after proper opportunity for mediation." (93 Cong. Rec. 3835) (italics supplied). (See Section 8(d) of the Act.)

If this language is to be given any effect, then it is clear that Section 8(b)(4)(A) cannot be interpreted as applying to the collateral effects resulting from picketing in a primary labor dispute. In almost every case of picketing in a primary labor dispute, employees of employers other than the employer involved in the dispute may be dissuaded from entering the property which is the *situs* of the dispute and this, in turn, may be construed literally as intended by the picketers for the purpose of forcing the employer who is not involved in the primary labor dispute to cease doing business with the employer so involved. A literal reading of Section 8(b)(4)(A) would therefore result, as a practical matter, in the prohibition of most direct strikes for the improvement of wages, hours and working conditions.

The Congress has made it clear that this was not its purpose in enacting Section 8(b)(4)(A). The Congress also made it clear that it was lawful to engage in primary strikes or primary picketing for recognition purposes. In these

cases the picketing union may or may not be the duly qualified bargaining representative of the majority of the employees working for the employer. (See House Conference Report No. 510, 80th Congress, 1st Session, p. 42. Senate Report No. 105, 80th Congress, 1st Session, p. 22.)

Senator Taft stated with respect to the proper application of Section 8(b)(4)(A) that:

> "It will not be directed against the use of propaganda or the use of persuasion, or against the use of any of the other peaceful methods of organizing employes. . . . It would not prevent anyone using the strike in a legitimate way, conducting peaceful picketing or employing persuasion." (93 Cong. Rec. 4436)

This clear statement of congressional intent has been confused at times by quotation of Senator Taft's statement refusing to recognize any distinction between good and bad secondary boycotts. In a colloquy with Senator Pepper on April 29, 1947 Senator Taft said:

> "It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different cases of secondary boycotts. So we have broadened the provisions dealing with secondary boycotts as to make them an unfair labor practice." (93 Cong. Rec. 4198; N.L.R.B., Legislative History, L.M.R.A., 1106.)

We contend that this did not mean that Section 8(b)(4)(A) was intended to apply to collateral effects of a primary strike or primary picketing. It is respectfully submitted

that this statement was intended only to explain the action of the Congress in refusing to recognize a distinction between secondary boycotts on the basis of justifiability in terms of the validity of the labor grievance at the point of the primary labor dispute. The opponents of the bill suggested most frequently that secondary boycotts were justifiable and should be allowed if the boycotted goods emanating from the place of primary dispute were produced under sweatshop conditions.

The legislative history of the Act shows that even the opponents of the Taft-Hartley Bill were agreed that certain types of secondary boycotts were unjustifiable. (See the State of the Union message to Congress January 6, 1947, 93 Cong. Rec. 136 and the President's veto message, 93 Daily Cong. Rec. 7501; N.L.R.B., Legislative History, L.M.R.A., 916. See also the President's veto message on the Case Bill, I Hearings before the Committee on Education and Labor, 80th Congress, 1st Session, on H. R. 4908, H. R. 8, H. R. 725, H. R. 880, H. R. 1095 and H. R. 1096, pp. 11 and 20.)

The attention of the Congress was focused on product boycotts when it enacted Section 8(b)(4)(A). See for example, 93 Daily Cong. Rec. A 1296; N.L.R.B., Legislative History, L.M.R.A., 582. Prominent among the cases which even the opponents of the Taft-Hartley Bill considered unjustifiable use of the secondary boycott were the cases where the picketing or striking union was seeking to effect a change in union affiliation at the place of manufacture through its economic power at the place where the products were to be used (93 Daily Cong. Rec. 4323; N.L.R.B., Legislative History, L.M.R.A., 1106.) They contended, how-

ever, that there were cases where the so-called "secondary boycott" was proper if the materials which were boycotted at the place of use were produced in plants where substandard conditions of labor were maintained.

It is clear that Senator Taft and the proponents of the Bill refused to recognize any such distinction and were of the opinion that there was no practical way of distinguishing between secondary boycotts on the basis of whether they were "good" or "bad." (*Ibid.*) It was in this context that Senator Taft made the above quoted statement concerning the all inclusive application of Section 8(b)(4)(A) to all secondary boycotts. At the conclusion of his colloquy with Senator Pepper, Senator Taft said:

> "Likewise, under the principle announced by the Senator from Florida, the workers could say that the C.I.O. union is not securing a high enough wage for the workers and is not representing the workers in the way it should represent them and that therefore they will strike. For instance, all over the United States carpenters are refusing to handle lumber which is finished in a mill in which C.I.O. workers are employed, or in another case, in which American Federation of Labor workers are employed."
>
> • • • • •
>
> "I do not see how we can distinguish between a plant employing union labor and a plant employing non-union labor, or between a plant paying good wages and a plant paying poor wages, or a plant employing C.I.O. labor and a plant employing A.F.L. labor. The members of the committee do not see any way to distinguish between those cases and prevent the gradual forcing

of an A.F.L. or C.I.O. control in various unions, and putting workers out of employment." (*Ibid.*)

It is for the reason that the broad scope of Section 8(b)(4)(A) did not allow labor to employ the secondary boycott against "sweatshop" goods that the President objected to that part of the Bill. (93 Daily Cong. Rec. 7501; N.L.R.B., Legislative History, L.M.R.A., 916.)

It is respectfully submitted that this controversy over the question of whether Section 8(b)(4)(A) could be drafted to prohibit unjustifiable secondary boycotts and yet allow secondary boycotts which were for a good purpose, did not in any way change the position of the proponents of the Bill or the language of the Act permitting direct organizational strikes or picketing, even though such strikes or picketing might have collateral consequences. We further contend that the refusal of the Congress to distinguish between secondary boycotts which had "good" and "bad" purposes did not mean that any secondary aspect of striking or picketing would make such striking or picketing a secondary boycott prohibited by Section 8(b)(4)(A), even though it were truly a direct form of labor activity.

B. The Picketing in This Case Constituted Primary Labor Activity Which Is Not Prohibited by Section 8(b)(4)(A).

1. Definition of Secondary Labor Activity Prohibited by Section 8(b)(4)(A).

The entire issue on this portion of the case turns on the proper description of the secondary labor activities which the Congress intended to prohibit by Section 8(b)(4)(A).

Senator Taft stated succinctly the Congressional purpose as follows:

> "This provision (Section 8(b)(4)(A) makes it unlawful to resort to a secondary boycott to injure the business of the third person who is wholly unconcerned in the disagreement between an employer and his employees." (93 Daily Cong. Rec. 4323; N.L.R.B., Legislative History, L.M.R.A., 1106.)

The court below has made its definition in the following language:

> "The gravamen of a secondary boycott is that its sanctions bear not upon the employer who alone is a party to the dispute but upon some third party who has no concern in it. Its aim is to compel him to stop business with the employer with the hope to induce the employer to give in to his employees' demands." (R. 327).

We believe that the definition of the court below is sound but that its application of the definition overlooks economic realities in the building and construction trades as stated by the dissenting judge below. A proper application of this definition will show that there was no violation of Section 8(b)(4)(A) in this case.

Before proceeding to the application of this definition to the facts in this case it would be well to analyze the definition in the light of the legislative history of the Act.

The actual cases described in the debates and the reports included the following:

1. An employer in the business of raising and marketing turkeys refused to hire union turkey pickers. The turkeys

were later refused shipment. (93 Daily Cong. Rec. A 1295; N.L.R.B., Legislative History, L.M.R.A., 582.)

2. The barring of "hot goods" from the market in cases involving shipments of lettuce, milk and asparagus. (*Ibid.*)

3. Electricians in the City of New York refused to install electrical products of manufacturers employing electricians who are members of some labor organization other than the local union representing the New York electricians. (Senate Report No. 105, 80th Congress, 1st Session, p. 22; See *New York Times*, June 26, 1950; *New York Herald Tribune*, June 29, 1950.)

4. The plant of a manufacturer of neon signs in Hartford, Connecticut, was organized by the C.I.O.. The A.F.L. sign hangers union refused to hang these signs before any store. (93 Daily Cong. Rec. 3954; N.L.R.B., Legislative History, L.M.R.A., 1012.)

5. C.I.O. longshoremen refused to unload lumber carried in ships manned by A.F.L. seamen. (93 Daily Cong. Rec. 4255; N.L.R.B., Legislative History, L.M.R.A., 1056.)

6. Refusal of teamsters to handle lumber because it is made in a plant where a C.I.O. union is certified. (93 Daily Cong. Rec. 4323; N.L.R.B., Legislative History, L.M.R.A., 1106.)

The statements in the reports and debates indicate that Congress had the following typical situation in mind when it enacted Section 8(b)(4)(A). A union is engaged in a primary labor dispute with employer A, a manufacturing company. There are substantive issues in this dispute. These issues may be the usual requests of a union for an improve-

ment in the terms of the labor agreement covering wages, hours or conditions. The substantive issue may also involve the request of a union which has not secured recognition from employer A for such recognition. In a declining economic situation the issue may be raised by the employer who wishes to effect a reduction in the wages or other terms of employment provided in a labor agreement.

As has been pointed out above (pp. 31-38) the union may exercise its collective strength in the dispute by way of strike or by peaceful picketing and other means of persuasion. The Congress did not intend to limit the rights or power of labor in the primary labor dispute against employer A except insofar as the national emergency disputes sections of the Act are involved, (Sec. 206-210 and such other sections of the Act as 8(b)(4)(c).

When the Congress enacted Section 8(b)(4)(A) it was concerned with the extension of the primary labor dispute with employer A to another employer, who for the purpose of this discussion will be referred to as employer B, whose only connection with the dispute is based on the fact that he buys goods manufactured by employer A. It was the Congressional view that the substantive issues of the primary labor dispute, whether they concern wages or recognition, do not concern employer B. He is not responsible for either the refusal to grant the wage increase or the refusal to grant recognition to the union. Employer B has no power to make a direct settlement of the substantive labor issues which exist between employer A and the union. The only way in which employer B can affect the economic competition which is going on between employer A and the union is by withdrawing his business from employer A,

which will tend to weaken A's bargaining power in his dispute with the union. The union seeks to win its primary labor dispute with employer A by adding the economic factor of employer B's withdrawal of business from employer A to the union side of the scale.

It was also the Congressional view that the employees of employer B do not have any economic relationship to the substantive issues in the primary labor dispute between employer A and the union. The employees of employer B may be sympathetically interested in the welfare of the employees of employer A or they may be interested from an organizational point of view, because their union represents the employees of employer A or seeks to represent them. The employees of employer B do not have any direct economic stake in the final outcome of the labor dispute between the union and employer A, according to the proponents of the bill.

It was apparently the congressional view that employer B is the "third party" to the primary labor dispute and should not be drawn into such dispute, both because an "innocent" party would thereby be injured and also because it was of the view that a limitation of the scope of industrial warfare was necessary to prevent an indefinite extension of the dispute through the various reaches of the economy.

It should be noted that the term "innocent" cannot be given a meaning here as simply the absence of wrong doing. Employer A, involved in the primary dispute may also be entirely sound in his position on the substantive issues of the dispute as a matter of justice. The term "innocent" party must therefore mean a party who is a bystander and

who does not belong in the area of the dispute. The term "neutral" again does not mean that employer B may not desire either employer A or the union to win the dispute or that his continuation of business or withdrawal of business will not affect the dispute. His neutrality again derives from the fact that he is not within the direct area of the labor dispute.

It is respectfully submitted that the above analysis of the congressional intent is supported by the following statements made by Senator Taft concerning secondary labor activity:

> "They are strikes which are not direct strikes to settle questions of wages or hour or better working conditions. They are strikes which are, in effect, attempts to bring direct pressure on third parties to get third parties to work in some way to bring about a result which may ultimately be favorable to the one initiating the pressure, which has no direct relation to the work except perhaps with regard to the question of power. (93 Cong. Rec. 3838.)
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> "Take a case in which the employer is getting along perfectly with his employees. They agree on wages. Wages and working conditions are satisfactory to both sides. Someone else says to those employees, 'We want you to strike against your employer because he happens to be handling some product which we do not like. We do not think it is made under proper conditions.' Of course if that sort of thing is encouraged there will be hundreds and thousands of strikes in the United States.

There is no reason that I can see why we should make it lawful for persons to incite workers to strike when they are perfectly satisfied with their conditions. If their conditions are not satisfactory, then it is perfectly lawful to encourage them to strike. The Senator (Pepper) says they must be encouraged to strike because their employer happens to have been doing business with someone the union does not like or with whom it is having trouble or having a strike. On that basis there can be a chain reaction that will tie up the entire United States in a series of sympathetic strikes, if we choose to call them that." (93 Cong. Rec. 4198.)

It is important to note that although the debates on the floor and the reports of the committee were lengthy and detailed, no mention was made by the senators or congressmen in charge of the Bill of the type of situation here involved as a case which was being prohibited by Section 8(b)(4)(A). It is true that members of the minority opposing the enactment of the legislation construed Section 8(b)(4)(A) of the Act as applying to a "refusal of union workers to work next to non-union workers of another employer engaged in a common project." (Senate Minority Report No. 105, Part 2, p. 20.) It is submitted that the statements of the minority are not usually a sound basis for ascertaining the will of the majority. Furthermore, the actual legislative history of this Act shows that the minority was endeavoring to get before the country descriptions of the results of a very complicated piece of legislation. It is therefore reasonable to assume that in the effort to develop such concrete examples, the minority may have interpreted the majority's bill in a more

extended fashion than the majority intended. See for example the discussion on political expenditures with special relationship to possible restrictions accomplished by that section upon the right of labor unions to make political comment in their newspapers. (93 Cong. Rec. 6436, 6441; N.L.R.B., Legislative History, L.M.R.A., 1526, 1534 and *United States* v. *C.I.O.*, 335 U. S. 106.)

2. The Union Was Engaged in a Primary Labor Dispute With Giorgi.

The court below concluded that there was no difference between Giorgi's relationship to Langer and the relationship between Giorgi and a supplier of materials (R. 327). It is respectfully submitted that the court below did not take into account the economic facts of the building and construction industry in reaching its conclusion.

Pertinent excerpts from a bulletin of the United States Bureau of Labor Statistics concerning the building trades have been collected and set forth in Appendix A to this brief (*infra* pp. 82-107). These excerpts show that building workers tend to regard themselves as members of given trades rather than as employees of given contractors. This derives from the fact that the work of the building and construction industry is temporary. Men are hired and laid off for the short period during which a particular building is under construction. Even within the noncontinuous duration of the particular construction job, employees in the particular trades may come on and go off the job at various times during the course of construction as the progress of the work calls for their particular trade. Understandably, they do not stay idle but move from one job to another,

either for the particular contractor who is employing them or for another contractor who may have a greater demand for men at that particular time. Their permanent asset is competence in the trade and their welfare is dependent upon conditions of the industry in the area rather than the status of the particular employer. Typically, wage rates for the particular trade are established on an area and not upon an individual employer basis. (Appendix A, *infra*, pp. 83, 84, 92-99.) See Dunlop and Hill, *The Wage Adjustment Board*, pp. 3, 85-88, 159.)

With these principal facts in mind it will be seen that I.B.E.W. Local 501 had a direct labor dispute with Giorgi. The substantive issue between Local No. 501 and Giorgi was the employment of non-union electricians. Giorgi, unlike the neutral and third party employer B discussed above, performed the very act which was the cause of the labor dispute. He decided to use non-union electricians on this particular construction job. The direct interest of Local No. 501 in the non-union condition on the job was not diminished by the fact that Giorgi, instead of hiring non-union electricians directly, hired them through Langer the non-union electrical subcontractor. Local No. 501 in this regard is in the same position as a union seeking to establish its status as the representative of the employees in a factory. Giorgi cannot therefore be considered an employer who is wholly unconcerned with the primary labor dispute. He is the party involved in the primary labor dispute.

Furthermore, Giorgi's employees and the employees of Deltorto, the carpentry subcontractor, had a direct economic interest in the dispute. It is a well known fact that the wage rates for the various trades in the building and construction industry have a traditional relationship to each

other. A cut in the electricians' wage rate in the geographical area of Greenwich, Connecticut, would ultimately have its effects upon the wage rates of other trades, including the wages of the carpenters. The non-union condition on the particular job was therefore not a matter of sympathy or organizational interest insofar as the union carpenters on the job were concerned. It was a matter of direct economic interest to them in terms of their wages. It was also of direct interest to the carpenters because their conditions of employment, other than wages, might deteriorate and, indeed, the continued use of non-union electricians might result in the whole job going non-union.

Under this analysis of the facts in this industry, it does not appear that application of Section 8(b)(4)(A) would accomplish the congressional intent which allowed direct organizational strikes or picketing. It will be noted that the picket sign referred to the fact that "the job" is unfair to organized labor. This is in truth the actual situation, since the non-union condition on the job, ordinarily attended by a lower wage scale, was unfair, and would be productive of adverse economic consequences not only to the electricians who were trying to preserve their wage rate in the area but also to the affiliated trades of the building and construction trades council whose area wage rates would be affected by a reduction in the area wage scale for electricians.

It was on this point of economic reality that the dissenting judge below differed from the majority. He pointed out that the error in the majority opinion was to assume a fact which was not in accord with the economics of the industry. He pointed out that the majority assumed that Giorgi was a third party who had no concern with the dispute when in fact Giorgi was the employer who had caused

the dispute. (R. 332, 333.) Giorgi's economic interest in selecting the non-union contractor is pointed out in the dissent because of the natural reason that he thus obtained a lower rate.

In all of these regards Giorgi cannot be considered to be in the position of an employer whose only connection with a primary labor dispute is that he happens to buy either goods or service of another employer who is involved in a primary labor dispute with the union.

It should also be noted that the relationship between the general contractor and a subcontractor in the building and construction industry is not that of two equal parties engaged in a common venture, as assumed by the court below. The general contractor takes responsibility for the entire job and their usual practice is to carry out the large part of each job with their own employees and sublet the remainder to specialty contractors. The decision as to whether a particular part of the work will be performed by the general contractor with his own employees or by specialty trade contractors with their employees is a matter of considerable variation in the industry but the general contractor does choose whether he will perform the work himself or have it performed by a specialty trade contractor. The general contractor's responsibility for the entire job is ordinarily discharged by his general foreman who, even on large jobs, ordinarily directs the work of the general contractor's employees through trade foremen. The general foreman coordinates the work of the various subcontractors crews. Although he may not have power to give direct orders to the subcontractors' fore-

man, "he may give them information and comments" and disagreements arising in the course of the work are referred to the respective contractor for decision. Small contractors such as Langer usually act as working foremen on their jobs. It is apparent from the small annual volume of his business that unless he did so he would be unable to secure compensation which would be above that of a journeyman or foreman in the industry. (Appendix A *infra* pp. 88-91, 99-102, 103-104. See also a chronological record of the contacts made by a general contractor in the course of construction of a small house in Hearings, before the Temporary National Economic Committee, p. 5500.)

Again there is a fundamental distinction between Giorgi and a purchaser of materials, for Giorgi as the general contractor would either personally or through his general foreman have a direct relationship to the work performed by Langer's employees.

From all of these facts it may be seen that Giorgi's relationship to the primary labor dispute occasioned by the non-union condition on the construction job was not merely that of a "third party" who is "free to discontinue" his relationship to another employer who is involved in a direct labor dispute.

The dissenting judge below has pointed out the anomalies resulting from the majority view. If Langer had decided to perform the small $325 contract he secured from Giorgi by himself, Section 8(b)(4)(A) would not be applicable although the direct labor dispute between Local 501 and Giorgi would not have been different in any practical respect. Similarly, if Giorgi had been a general contractor

with an electrical department, the picketing would have been proper although, again, the various trades involved in this dispute and Giorgi himself would have had no different relationship to the dispute than in the instant case where Giorgi decided to secure the benefit of a non-union condition through the hiring of a non-union electrical subcontractor. We respectfully submit that the dissenting judge was correct when he, in effect, characterized Giorgi as a primary party to the labor dispute with Local No. 501 of the I.B.E.W. This view is supported by the unanimous decision of the Court of Appeals, District of Columbia Circuit in *Denver Building and Construction Trades Council et al* v. *National Labor Relations Board, supra.* See *Mills* v. *Plumbers' Union,* 83 F. Supp. 240.

It is our view that the above analysis of the intent of Section 8(b)(4)(A) in its application to the facts of this case does not nullify the words in the statute prohibiting labor activities an object of which is to force or require any employer or other person to cease doing business with any other person. We do not contend that Section 8(b)(4)(A) is limited to a product boycott. If the same facts and circumstances exist in a case where the business relationship deals with services or other matters, the section is applicable. For example, the "cease doing business" phrase of Section 8(b)(4)(A) would have been applicable to Giorgi, if a union such as the Engineers had a primary labor dispute with a professional engineering firm in the City of New York from whom Giorgi was securing engineering services over wages or recognition and then sought to bring Giorgi into the dispute by striking Giorgi at a time

when he was employing operating engineers engaged in excavation work. The section would have been violated even though there was no product boycott prohibited by the language of Section 8(b)(4)(A) which makes illegal labor activities an object of which is "forcing or requiring . . . any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor or manufacturer, . . ."

Another illustration of the application of the "cease doing business" phrase of Section 8(b)(4)(A) would be the following case:

> Giorgi rents property he owns in the City of New York to Employer A who operates a restaurant on the property. Employer A is in a dispute with a union representing its employees over wages or recognition. The restaurant union secures the cooperation of the construction unions to stop Giorgi's construction job in Greenwich, Connecticut, to force Giorgi to cancel his lease to Employer A and thus secure better terms for the resolution of the substantive issue involved in the labor dispute at the restaurant.

(Any constitutional issues raised by these hypothetical illustrations are not discussed in this brief.)

3. The Union was Engaged in a Primary Labor Dispute With Langer.

The court below assumed that the union had a primary labor dispute with Langer but that this was the only primary labor dispute in the case (R. 327, 328). We believe the first assumption is correct; we disagree with the second assumption for the reasons stated above showing that

the union also had a primary labor dispute with Giorgi because of the non-union condition on the job.

Even if it is accepted that the court below did not err in its description of Giorgi as a third party neutral to the labor dispute, we contend that on the facts of this case and of the building and construction industry, the picketing was not prohibited by Section 8(b)(4)(A) of the Act because the effects of the single act of picketing on Deltorto's employees and through them upon Giorgi were collateral to the allowable direct picketing against Langer.

The court below conceded that the instant case might have been of this sort if Langer's non-union employees had been on the job at the time of the picketing (R. 327). The court then listed two situations in which the legal question remained open had the fact been that Langer's non-union employees were on the job at the time of the picketing: (1) if Patterson's only purpose had been to induce the non-union employees to quit and (2) if Patterson had intended to exert pressure on Giorgi, which included pressure on Langer (R. 327, 328). The court also left open the question of whether the section covers the situation in *Douds* v. *Metropolitan Federation of Architects*, 75 Fed. Sup. p. 672 where the suppositious third person was only a disguise for the employer (R. 328).

The National Labor Relations Board appears to have adopted the theory that the physical *situs* is the single factor to be used in determining the distinction between allowable secondary action and prohibited action under Section 8(b)(4)(A) of the Act. Thus, in the petition filed by the

Board for a writ of certiorari in *International Rice Milling Co., Inc.* v. *National Labor Relations Board* (No. 313, October Term 1950) the Board states that picketing at the premises of an employer with whom a union is engaged in a labor dispute is primary and does not violate Section 8(b)(4)(A) even though an object of the picketing is to induce employees of neutral employers, who approach the picket line in the course of their employment, not to cross it (p. 5). Prominent among the cases cited in support of this view is *Ryan Construction Corp.*, 85 N.L.R.B. 417 where the union representing the employees of the manufacturing plant placed a picket line around all the entrances to the property of the plant including the entrance through which the construction employees of the building contractor went in reaching the place where they were engaged in constructing an addition to the plant. The Board states that there is an opposite legal result if the picketing occurs at the premises of a neutral employer. A case cited by the Board in this connection is *United Brotherhood of Carpenters et al* v. *Wadsworth Building Co. et al*, 81 N.L.R.B. 802; Petition, pp. 9, 10, where the union had a primary labor dispute with Wadsworth, a manufacturer of prefabricated housing, and picketed Klassen and Hodgson at the construction job where the materials supplied by Wadsworth were to be used. The Board further is of the view that in the intermediate situation where the picketing occurs "at a project where two or more employers, only one of whom is involved in a labor dispute, are at work, the Board holds that the picketing is secondary if the evidence shows that the picketing is designed to induce employees of one of

the neutral employers to cease work for the purpose of disrupting business relations between the neutral employer and the employer who is engaged in a dispute'' (*ibid.*, p. 10). The petition cites in support of this view the three building trades cases, including the instant case, which are now before this Court.

As pointed out above, we disagree with the Board's conclusion contained in its assumption that in the instant case Giorgi was a ''neutral'' employer. It is also our contention that the *situs* theory, espoused by the Board, is not an exclusive means of making the necessary distinction between actions prohibited and not prohibited by Section 8(b)(4)(A) of the Act. In each of the cases arising under this section of the Act the *first* question is whether there is any secondary labor activity and this in turn includes the proper definition of the parties to the primary labor dispute or labor disputes. If it be found that under the facts of the case there is secondary labor activity, then the *second* question is whether such secondary labor activity is allowable as a collateral or incidental result of the primary strike or picketing. In the latter type of case, as where the employees of an employer not involved in the primary labor dispute refused to cross a picket line established in the course of a strike for wages, there is a disruptive effect on the business relations between the neutral employer and the primary employer but under the *situs* theory such harm is allowable if the right to strike for basic issues such as wages, hours and working conditions, or recognition, is to be given any real effect.

An illustration of a case which deals with the first ques-

tion, i.e., the determination of whether there is any secondary labor activity is *Douds* v. *Metropolitan Federation of Architects,* U.S.D.C. So. Dist. of N. Y., 75 F. Supp. 672, which has received the general approval of the lower courts and also the approval of the Board. In that case the District Judge ruled that Section 8(b)(4)(A) was not violated by the act of picketing a place of business separate from the place of business where the union had its initial labor dispute. The union had struck Ebasco whose employees were represented by the union as its bargaining agent. Ebasco then transferred a portion of its work to Project Engineering Company, a subcontractor whose relationship to Ebasco has been established approximately one year before the strike. The union then picketed Project. The latter company had an inception completely independent of Ebasco or its influence and there was no common ownership of any kind. The District Judge stressed the events which showed that Project employees did work which but for the strike of Ebasco's employees would have been done by Ebasco. The "economic effect upon Ebasco employees was precisely that which would flow from Ebasco hiring strike breakers to work on its own premises."

It is respectfully submitted that the central reason for the allowability of the picketing at the premises of Project is not the fiction that Project, which was truly independent, was in actuality a disguise for Ebasco. The decisive factor is that Project threw its economic weight onto the scales in behalf of the employer involved in the primary labor dispute between Ebasco and the union. In that way Project became a second party to the primary labor dispute even though the *situs* of the picketing before the

Project was different from the *situs* of Ebasco where the dispute had commenced initially.

The District Court in the *Metropolitan Federation of Architects* case refused to hold "that corporate ownership or insulation of legal interests between the businesses can be conclusive as to neutrality or disinterestedness in a labor dispute" (*supra*, p. 677). This reasoning applies equally to the complex interrelated facts of the relationships among employers on a construction job, though from a common law point of view they may be deemed independent.

We contend further, however, that even if the designation, by the Court below, of Giorgi, and Deltorto as enmeshed with him, as neutrals is sound, the proper application of the so-called *situs* rule would call for the conclusion that Section 8(b)(4)(A) of the Act does not apply here as it has been held not to apply in the *Ryan Construction Corp.* case, *supra*. The decisive factor in the conclusions of both the court below and the Board on this point appears to be the assumption of fact that the intent of the picketing was only to disrupt the business relationship between Giorgi and Langer and that the picketing was not intended to affect the employees of Langer although the union did have a dispute with Langer.

The court below relied in reaching this result upon the fact that Langer's employees were not on the job at the time of the picketing. It is respectfully submitted that this is an over-simplification of the picketing in this case which is typical in the building trades.

The excerpts from Bulletin No. 967 of the Board of Labor

Statistics make it clear that even in the course of a particular construction job the employment of any given trade is temporary and that employees go on and off the job in accordance with the progress of construction: [The building trades worker]" . . . is subject to layoff at any time, either permanent (as the work for which he was hired approaches completion) or temporary, with instructions to return at a stated time, because of a temporary shortage of material or to allow other trades to complete work which must be done before he can proceed further with his own work" (*infra*, Appendix A, p. 97). In the instant case, Langer's non-union electricians had started to work and had completed the "roughing" operation at the time of the picketing (R. 77). It is entirely clear from the record that electrical work remained to be performed on the construction of the house and that Langer would have returned to the job in the normal course of construction (R. 77, 78). The exact time when Langer's employees would have otherwise returned is not shown by the record.

We submit, therefore, that under the facts of this case it is entirely reasonable to infer that one of the purposes of the picketing was to induce the non-union electricians not to return to work on the picketed job. If it is true that a subcontractor in the building trades may be the subject of direct picketing it would be entirely unrealistic to say that the right can be exercised only at those points of time when the construction job calls for the actual presence of his employees on the job. The time for such employment could be arranged for after nightfall when the picketing could be reduced in its effect to a complete nullity.

To say that Patterson intended as a reasonable consequence of his picketing that Langer's employees would thereby be induced not to return to work, is not fanciful. Union and non-union electricians are not distinguishable from each other by mere observation. They wear the same working clothes, use the same tools and perform the same work operations. Union men do not carry signs on the job proclaiming their status.

The private knowledge of an electrician of the fact that he is non-union is quite a different matter from its public advertisement through picketing. It was only through picketing that Langer's non-union electricians could be induced peacefully not to return to work. That pressure is registered upon the individual employee to quit work or not to return to work by picketing is an ordinary fact in the field of labor relations.

The record is replete with information on how the fact of the picketing circulated among the parties interested in this job. It is reasonable to assume that Langer's employees would learn of the fact just as Langer did, although he was not on the job at the time of the picketing.

The substantive issue in the primary labor dispute between I.B.E.W. Local No. 501 and Langer was Langer's breach of his contract with the local (R. 66). Langer had apparently violated the union security clause of the agreement in June, 1947 (R. 73, 74). He was advised that he had broken the contract in August, 1947. No exact date is specified for this particular month (R. 75, 76). The advice

was apparently given by the chairman of a joint labor management board, presumably set up to handle disputes under agreements (*ibid*).

It is respectfully submitted that the question of whether the agreement between Langer and I.B.E.W. Local No. 501 which was first entered into October, 1944 (R. 66) contained a closed shop provision is immaterial to the issues in this case. At the time that contract was entered into, such a provision was entirely legal and continued to be legal for one year following June 23, 1947 (Sec. 102).

Under the provisions of Sec. 102 of the Act Patterson could have elected not to rescind the agreement because of its violation and requested resumption of relations under the agreement, which would have been legal at the time of the picketing, i.e., April 16, 1948. This is so since the record merely shows a statement by the chairman of the trade board (R. 76) rather than a cancellation of the agreement by the union. Furthermore, there was no allegations in the complaint of any violation of Section 8(b)(2).

Under the preceding analysis, it is contended that a proper application of the *situs* theory would hold the picketing at the house was direct because of the primary dispute between Local No. 501 and Langer and the effect on Deltorto's employees was a collateral result allowable under the protection granted direct strikes or picketing for organizational purposes. If the contentions submitted in this brief are accepted that the dispute between Local No. 501 and Giorgi was primary, then the effect of the picketing on Deltorto's employees was a collateral and allowable result, under the *situs* theory, of the direct picketing of Giorgi.

III.

If Congress Intended Section 8(b)(4)(A) To Be Applied To Peaceful Picketing Under the Circumstances Of This Case, the Section Violates the Free Speech Protection Of the First Amendment To the Constitution.

If Section 8(b)(4)(A) of the Act was properly interpreted by the court below as applying to the facts of this case, it is our further contention that the enforcement of the order prohibiting peaceful picketing would be in conflict with applicable decisions of this Court under the First Amendment on the scope of the constitutional protection of peaceful picketing in labor disputes.

This Court has decided a number of cases in the October, 1949, Term which restrict the language of earlier decisions on picketing as free speech to the facts of such earlier decisions. *Teamsters* v. *Hanke*, 339 U. S. 470; *Hughes* v. *California*, 339 U. S. 460; and *Building Service Employees International Union, Local No. 262* v. *Gazzam*, 339 U. S. 532.

The effect of these decisions is to permit the restraint of peaceful picketing which is intended to violate public policy as announced by state legislation, or even by a state court, in the absence of legislation. There is nothing in these decisions, however, which reverses the actual holdings of the earlier cases.

Thus, it is stated in *Teamsters* v. *Hanke*, *supra*, pp. 478-479, that: "What was *actually decided* in *American*

Federation of Labor v. *Swing*, 312 U. S. 321, *Bakery and Pastry Drivers and Helpers Local* v. *Wohl*, 315 U. S. 769, and *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293, does not preclude us from upholding Washington's power to make the choice of policy she has here made. In those cases we held only that a State could not proscribe picketing merely by setting artificial bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute." (Italics supplied.)

The continuing validity of the holding in the *Swing* case, *supra*, was further indicated by this Court in the *Gazzam* case, *supra*, p. 539, as follows:

"The state has not here, as in *Swing*, relied on the absence of an employer-employee relationship. Thus, the state has not as was the case there, excluded 'workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' 312 U. S. at 326."

These recent decisions of this Court do not establish the rule that all peaceful picketing is removed from the protection of the First Amendment. Question is, therefore, raised whether under the holdings on this point, the ruling of the court below applying Section 8(b)(4)(A) to the facts of this case is violative of the First Amendment.

The court below, in its consideration of the constitutional issue of free speech, concluded that there was no absolute

protection of picketing as such (R. 331-332). This is not our contention.

We urge that the drawing of the line of permissible contest under the interpretation of Section 8(b)(4)(A) by the court below is unreal in the light of the facts of this industry and, therefore, does not constitute a sufficient factor to balance the abridgement of freedom of expression in this case.

With respect to this latter point, the court below stated that "Congress, in the search for a compromise between the conflicting interests of employees in collective bargaining and that of *neutrals* in avoiding involvement in *quarrels not their own*, decided to draw a line at *secondary boycotts;* and the propriety of the decision is not for us" (R. 332). (Italics supplied.)

We respectfully submit that the court below assumed certain conclusions which are not consistent with the record or with the decisions of this Court.

In *Carpenters and Joiners Union of America, Local No. 213* v. *Ritter's Cafe*, 315 U. S. 722, this Court in a five to four decision upheld a restraint on picketing under the State anti-trust statutes where building and construction unions picketed a cafe owned by Ritter because Ritter had let a contract for the construction of a building completely unrelated to the cafe, and one and one-half miles away from the cafe, to a contractor who employed non-union men. There was no labor dispute between Ritter and the Cafe's employees; nor were any building trades employees, such as carpenters and painters employed at the Cafe.

The majority of this Court emphasized the fact that the prohibition was directed against picketing a business [the cafe-restaurant industry] wholly outside the economic context of the "real dispute" [non-union conditions at building project—building and construction industry]. The *Swing* case, *supra,* was distinguished on the ground that there circumstances existed where there was an "interdependence of economic interest of all engaged in the same industry."

The Court stated that:

> "In the circumstances of the case before us Texas has declared that its general welfare would not be served if, in a controversy between a contractor and builders workers' unions, the unions were permitted to bring to bear the full weight of familiar weapons in industrial combat against a restaurant business, which, as a business, *has no nexus with the building dispute* but which *happens* to be owned by a person who contracts with the builder." (*Carpenters and Joiners Union of America Local No. 213* v. *Ritter's Cafe, supra,* p. 726).

It will be noted that the wages of the cafeteria employees and their other conditions of labor did not have any direct economic relationship to the wages and other conditions of labor in the building trades.

In the instant case, the facts do not raise a question of picketing an unrelated industry; the picketing was not only in the same industry but in the local wage area and on the very job where the labor dispute or disputes had their

situs. Furthermore, the interdependence of economic interest was a substantial factor not only in the local wage area for electricians but also for the other crafts of employees on the particular job. Non-union conditions on the dwelling house at Greenwich, Connecticut, were of direct interest to electricians in the area insofar as the stability of the wage rates in the area are concerned. They were also of direct interest to the carpenters and other union trades working on the dwelling house, for it is a commonplace that non-union rates in one craft or trade have a necessary downward effect on the rates paid to other crafts or trades in the same local area and on the same construction job.

The importance of this interdependence of employee economic interest has been given constitutional recognition by this Court in the *Swing* case, *supra.* There a judgment holding that an injunction should issue against the picketing of a beauty shop by a stranger union which did not have an employer-employee relationship with the shop, was reversed on the following grounds: "A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Foundries* v. *Tri-City Council,* 257 U. S. 184, 209. The right of free competition cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be

relevant to their interests, can no more be barred because of concern for the economic interest against which they are seeking to enlist public opinion than could the utterance in *Thornhill's* case." *Ibid.*, 312 U. S. 321, 326. See *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293.

It is interesting to note that the very same quotation relied upon by this Court in the *Swing* case, *supra*, was heartily approved by Senator Taft in his colloquy with Senator Pepper during the debates on the Bill in the Senate (93 Daily Cong. Rec. 4321; N.L.R.B., Legislative History, 1106-1107.)

In the instant case a reading has been given to Section 8(b)(4)(A) by the court below as meaning literally that picketing is prohibited if it has the effect of requiring one employer to discontinue *any* business relationships he may have with *any other* person (R. 327). The only test applied by the court below is based on the form and not the content of the alleged "secondary boycott" (R. 331-332). The Court appears to have been of the view that if there are two employers involved and the relationship between such employers can be described as a "doing business" relationship under the usual meaning of that term, then picketing which may have the effect of disrupting that business relationship is prohibited by Section 8(b)(4)(A), although the Court appeared to concede that the accidental factor of the physical location of the picketing might justify it if the picketing was directed solely against the so-called primary employer and the effect on the employees of the so-called "secondary employer" was an incidental and collateral result of the picketing.

The District Court in *Douds* v. *Metropolitan Federation of Architects, supra,* has pointed out that to give literal effect to the dictionary meaning of the "cease doing business" phrase would result in such absurdities as the protection of the business relationship between the primary employer and his employees or between a struck primary employer and his customers (*Douds* v. *Metropolitan Federation of Architects, supra,* p. 675).

We have contended, *supra,* this was not the intent of the Congress. We respectfully submit that if it was, then the Congress has drawn a line of permissible industrial contest which is as arbitrary as the line struck down by this Court in the *Swing* case, *supra.*

To warrant an abridgement of the constitutional right of free speech, there must be a countervailing public policy which justifies the abridgement. This may, perhaps, be found in the public interest of limiting the exercise of labor's economic power to employers directly involved in a substantive labor dispute with a union. We contend that the requisite justification for the abridgement of free speech certainly cannot be found in the arithmetic fact that more than one employer's economic interest is adversely affected by such picketing. Nor is it reasonable to conclude from the actual cases which have been cited on the subject, that the only administrative method by which the congressional policy of prohibiting the extension of industrial disputes to so-called innocent neutrals can be accomplished is by giving literal effect to the language of Section 8(b)(4)(A) which bars, in a dictionary sense, strikes or similar labor activity, an object of which is to force or require "any

employer or other person . . . to cease doing business with any other person." It is suggested that the District Judge in the *Douds* case, *supra,* was proceeding on the fundamental constitutional rule of the *Swing* case when he stated that "I am unable to hold that corporate ownership or insulation of legal interests between two businesses can be conclusive as to neutrality or disinterestedness in a labor dispute." (*Id; supra,* p. 677.)

In the instant case Giorgi, the general contractor, was not an innocent third party to the labor dispute. He caused it by employing non-union electricians (through Langer) on the work he had contracted to perform.

The picketing did not occur at another establishment or in another industry. It occurred on the very job where the non-union electricians were employed and which the union deemed to be unfair.

Under these facts, it is our contention that the same considerations which lead to the conclusion that the labor activities in this case did not constitute a secondary boycott prohibited by Section 8(b)(4)(A) also lead to the conclusion that, if Congress intended the prohibition to apply, there is a violation of the freedoms of the individual which the First Amendment seeks to protect.

This is particularly true in the building and construction industry where there is always more than one employer on even the smallest job. Peaceful picketing for whatever reason, if successful, can always be construed as having been the effective agent in causing the termination of a literal "secondary" business relationship. The economic facts of this industry coupled with the broad phase "an object" in

Section 8(b)(4)(A), if interpreted literally and without relation to the intent of Congress as discussed *supra*, would mean that any strike or picketing for economic reasons or organizational objectives would be enjoinable because of its effect on the multiple employer relationships on the job.

We believe that although the Congress intended to apply stringent restrictions to labor by means of the Act, it did not intend to go as far as prohibiting strikes or picketing for organizational or economic objectives (See Conference Report on the Act, 80th Cong., 1st Sess., H. Rep. No. 510, p. 43; 93 Daily Cong. Rec. 3950; N.L.R.B., Legislative History, L.M.R.A., 1005). In this connection, we wish to urge again that the intent of Congress was evidenced by the statements of the majority Congressmen in charge of the Bill; not by the minority which was sincerely endeavoring to convince the country of the utterly destructive effects of the proposed legislation. If it is held, however, that the Congress intended such a result, we contend the Act is violative of the First Amendment.

IV.

Pursuant To the Provision of Section 8(c) of the Act the Picketing In This Case Was Not Evidence of a Violation of Section 8(b)(4)(A).

We also contend that even if it is assumed that Patterson's acts constituted a violation of Section 8(b)(4)(A) of the Act, and such application of the Act is constitutional, nevertheless there was no basis for issuance of the order in this case because under Section 8(c) of the Act the picketing under the facts of this case could not constitute evidence of such violation.

Section 8(c) follows the enumeration of employer unfair labor practices in Section 8(a) and union unfair labor practices in Section 8(b). It provides that:

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice *under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.*" (italics supplied.)

It is our view that the Board's affirmation of the Trial Examiner's findings except such as were inconsistent with its own report constituted an affirmation of the Examiner's finding, that in the circumstances of this case the picketing by Patterson and his talks with various parties in this case did not contain any "threats of reprisal or force or promise of benefit" (R. 281, 265 - 281; 296, 297). This was also the view of the court below since it assumed that such was the action of the Board in formulating its conclusions on the subject of the effect of Section 8(c) in this case (R. 328).

It is our contention that the adoption of this assumption by the court below, which we believe to be correct, required the court to hold that the picketing and Patterson's talks came within the language of Section 8(c) and therefore did not constitute an unfair labor practice under Section 8(b)(4)(A) of the Act. The court below has in effect rendered Section 8(c) empty of any meaning or effect in its possible application to the unfair labor practice provisions of the Act relating to unions, although the provisions of

Section 8(c) continue to have substantial meaning in immunizing certain employer conduct which, previous to the enactment of Section 8(c), were deemed unfair labor practices under the National Labor Relations Act.

It is interesting to note that in construing Section 8(c) of the Act the court below and the Board dropped the literal approach to the interpretation of statutory language which they utilized in determining the applicability of Section 8(b)(4)(A) to the facts in this case. The court below apparently realized that it was reading out of the Act any real effect of Section 8(c) in its application to union unfair labor practices. Its conclusions, however, were based largely on the view that to give Section 8(c) a meaning as broad as its language would result in nullifying other provisions of the Act. The court below specifically referred to the language of Section 8(b)(2) which prohibits "causing or attempting to cause" an employer to violate the union security provisions of Section 8(a)(3):

> "We do not believe that Congress meant to allow a union to persuade an employer so to discriminate even though it does so without threats or promises."

A similar view was taken with respect to the language of Section 8(b)(2) which forbids "causing or attempting to cause" an employer to discriminate against an employee because he had been put out of a union for any reason but failure to pay his dues (R., 328-329).

The National Labor Relations Board has pointed out with respect to this very issue that:

"The words 'cause or attempt to cause' also clearly imply something more than a bargaining demand. It is noteworthy that the words 'persuade or attempt to persuade' were used in Section 8(b)(2) in the Senate bill as originally passed, but were changed in conference to 'cause or attempt to cause.' In explaining this substitution, Senator Taft said that the House conferees had objected to the language 'on the ground that it seemed inconsistent with the provision guaranteeing all parties freedom of expression.'" (In the matter of *International Typographical Union,* 86 N.L.R.B. No. 115, 25 L.R.R.M. 1002; See also *Wadsworth,* 81 N.L.R.B. 802, 808, 814.)

It will thus be seen that it was the direct intent of Congress, based on its interpretation of Section 8(c) of the Act to prevent Section 8(b)(2) from having the broad meaning relied upon by the court below in explaining its position which renders Section 8(c) nugatory insofar as the union unfair labor practice sections of the Act are concerned.

The court below also ruled that Section 8(c) could not be applicable to Section 8(b)(4)(A) since that would excuse a union or its agent which induces another union to strike for any of the four purposes forbidden in that section. It relied upon the common law theory establishing criminal or tortious liability for one who advises the commission of a wrongful act. We respectfully contend that the court below overlooked the fact that Section 8(b)(4)(A) must be taken in conjunction with Section 10 of the Act and its overriding purpose of freeing commerce from obstructions. Section 8(b)(4)(A) is not intended to punish for wrongs committed.

It is rather intended to restrain the performance of actions which are deemed injurious to commerce. The purpose of Congress is achieved by providing for the enjoining of the union which has been induced by another union to commit a prohibited act, since it is the induced union which has jurisdiction over the employees who are engaging in the strike or concerted refusal to work.

If this initial premise of the Court, that the common law theory holding a third party liable for instigating the commission of a tortious act proves Section 8(c) not applicable to Section 8(b)(4)(A), was in error in light of the congressional intent, it was equally so in its application to the type of alleged violation which occurred in this case. The Court recognized the difficulty of using the tort theory because the fact was that in this case the persons instigated had not committed any wrong. Section 8(b)(4)(A) prohibits a labor organization or its agents from engaging in a strike for an object prohibited by Section 8(b)(4)(A). It does not prohibit employees from acting in concert without the participation of the union or its agents in striking for an object prohibited by this section of the Act.

Finally, the court below apparently interpreted Section 8(c) as covering utterances which contain more than bare inducements and are accompanied by discursive argument (R. 330-331). This interpretation is based apparently upon the language of the Senate Report indicating that Section 8(c) was intended to adopt the rule announced by this Court in *Thomas* v. *Collins*, 323 U. S. 516. It should be noted that the picket sign carried by Patterson stated merely that "This job is unfair to organized labor." The placard

also carried the identifying number of the local union of the I.B.E.W. "501", of which Patterson was the business representative (R. 258). We believe that the measure of protection afforded by Section 8(c) of the Act is not determined by the relative length of the opinion expressed by the party who becomes the subject of an unfair labor practice complaint. There was not contained in this expression any "threat of reprisal or force or promise of benefit" and it, therefore, should have been held immune under Section 8(c) of the Act.

The Board has been more realistic in its treatment of Section 8(c) *Wadsworth* case, 81 N.L.R.B. 802. The minority (two members) made an exhaustive analysis of the legislative history of the Act leading them to the conclusion that Section 8(c) of the Act was applicable to peaceful picketing. The majority recognized the force of this legislative history and concluded that Section 8(c) was in direct conflict with Section 8(b)(4)(A) (*id, supra* 807-816, 820-822). They went on, however, to take the position that since Section 8(b)(4)(A) was specific and Section 8(c) was general, the specific provisions of the Act would have to control.

We believe this conclusion of the three members of the board is contrary to the intent of Congress which made a serious point of its desire to give equal freedom to both employers and unions.

The legislative history of the Act shows that the free speech section of the Labor Management Relations Act of 1947 was passed by the House in the following form:

"Sec. 8(d)(1) Notwithstanding any other provision

of this section, the following shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act:

"Expressing any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, if it does not by its own terms threaten force or economic reprisal."

The House Report states with respect to this provision of the Bill, that

"This guarantees free speech to employers, to employees, and to unions . . . nothing that anyone says shall constitute or be evidence of an unfair labor practice unless it, by its own expressed terms, threatens force or economic reprisal. This means that a statement may not be used against the person making it unless it, standing alone, is unfair within the express terms of Sections 7 and 8 of the amended Act" (80th Congress, 1st Session, House Report No. 245, p. 33).

The Senate Bill as reported, provided that:

"The Board shall not base any finding of unfair labor practice upon any statement of view or arguments, either written or oral, if such statement contains under all the circumstances no threat, express or implied, of reprisal or force, or offer, express or implied, of benefit."

In its report the Senate explained the provision relating to free speech as follows:

> "Another amendment to this section would insure both to employers and labor organizations full freedom to express their views to employees on labor matters, refrain (*sic*) from threats of violence, intimation of economic reprisal, or offers of benefit. The Supreme Court in *Thomas* v. *Collins* (323 U.S. 516) held, contrary to some earlier decisions of the Labor Board, that the Constitution guarantees freedom of speech on either side in labor controversies and approved the doctrine of the *American Tube Bending case* (134 F.(2d) 993). The Board has placed a limited construction upon these decisions by holding such speeches by employers to be coercive if the employer was found guilty of some other unfair labor practice, even though severable or unrelated (*Monumental Life Insurance*, 69 N.L.R.B. 247) or if the speech was made in the plant on working time (*Clark Brothers*, 70 N.L.R.B. 60). The committee believes these decisions to be too restrictive and, in this section, provides that if, *under all the circumstances*, there is neither an expressed or implied threat of reprisal, force, or offer of benefit, the Board shall not predicate any finding of unfair labor practice upon the statement. The Board, of course, will not be precluded from considering such statements as evidence" (80th Cong., 1st Sess., S. Rep. No. 105, pp. 23-24). (Italics supplied.)

The Conference Report resulted in the provisions now contained in the statute set forth above as Section 8(c).

The analysis presented by Senator Taft, who was in charge of the Bill, to the Senate on June 5, 1947, which explained the differences between the Conference agreement and the Senate Amendment, set forth the following explanation of the agreement on Section 8(c):

> "Subsection (c) relating to the right of employers, employees and labor organizations to express opinions and views freely *conforms substantially with the language of subsection 8(d)(1) of the House bill and is a substitute for section 8(c) of the Senate amendment.* The House conferees were of the opinion that the phrase 'under all the circumstances' in the Senate amendment was ambiguous and might be susceptible of being construed as approving certain Board decisions which have attempted to circumscribe the right of free speech where there were also findings of unfair labor practices. Since this was certainly contrary to the intent of the Senate, as the accompanying report of the committee with respect to this subsection indicates, *the Senate conferees acceded to the wish of the House group that the intent of this section be clarified.*
>
> "Since the adoption of the conference agreement some inquiries have been received as to whether or not the guarantee of freedom of expression contained in this section is limited to expressions 'which are not printed, graphic. . . .' These words are not words of limitation but were added in the House bill so as to make it clear that freedom of expression was not confined to oral utterances. The language of the report of

> the House committee makes it clear, moreover, that what the sponsors of the House bill had in mind were primarily oral utterances. There has also been some question raised with respect to the phrase 'constitute or be evidence of an unfair labor practice.' The purpose of this language is to make it clear that the Board is not to use any utterances not containing threats or promises of benefit as either an unfair practice standing alone or as making some act which would otherwise not be an unfair labor practice, an unfair labor practice. It should be noted that this subsection is limited to 'views, argument, or opinions' and does not cover instructions, directions, or other statements which might be deemed admissions under ordinary rules of evidence. In other words this section does not make incompetent, evidence which would ordinarily be deemed relevant and admissible in courts of law" (93 Cong. Record 6601; N.L.R.B., Legislative History, L.M.R.A., 1540-1541). (Italics supplied.)

As stated previously, the above legislative history shows the strong intent of Congress to apply the free speech amendment equally to both employers and unions. It also shows that the Congress intended the National Labor Relations Board to predicate its findings on alleged unfair labor practices on the language contained in the specific expression which was the subject of the allegation.

The extent of the protection afforded by this amendment to expressions is shown most clearly in the Senate Report which disapproved of the "captive audience" rule of the Board and of the Board's practice in relying upon other evidence of unrelated practices in violation of the Act to

make an expression of views, otherwise proper, a violation of the Act.

The Board has in fact applied Section 8(c) in accordance with the expressed intent of Congress insofar as it relates to employers. Thus, the Board, prior to this section of the Act, considered expressions by employers to "captive audiences" as a basis for finding an unfair labor practice. *Clark Brothers, Inc.*, 70 N.L.R.B. 802, affirmed 163 F.(2d) 373 (2nd Cir.). The "captive audience" doctrine has been overruled by the Board on the basis of Section 8(c) in the case of *Babcock and Wilcox*, 77 N.L.R.B. 577.

The effect of Section 8(c) with respect to employer unfair labor practices has been to immunize expressions of the employer even when such expressions were associated with something more than the utterance itself. The employer cannot be held to have engaged in an unfair labor practice by speech alone even though it is a well known fact that the economic power of the employer makes expressions by him something more than expressions of views by outsiders having no relationship with the employees which can produce benefit or adverse consequence to them. Such expressions are also immunized even though the employer actually exercises his economic power to require compulsory attendance during work time to listen to his expressions with respect to union matters.

It is our view that, if equal effect is given to Section 8(c) in its application to alleged union unfair labor practices, the picketing under the circumstances of this case is also immunized by Section 8(c).

It is not our contention that Section 8(c) immunizes all peaceful picketing and that the line of distinction is to be drawn between violence and non-violence. It has become customary to think of all peaceful picketing as constituting one category. The fact is that there are different types of peaceful picketing, some of which may secure immunity under Section 8(c) and others of which do not secure such immunity.

We believe that the crucial fact in this case is that the picketing was carried out by the agent of a union which had no power to cause benefit or harm to the union members on the job. This was not a case of picketing by the representative of a union whose members were on the job. Such picketing might well be construed to fall within the exceptions stated in Senator Taft's analysis quoted above, which noted that the language of Section 8(c) "is limited to 'views, arguments or opinion' and does not cover instructions, directions or other statements which might be deemed admissions under ordinary rules of evidence."

Section 8(c) might also be inapplicable to a case where there was no picketing but a more subtle or indirect form of inducement to action had been taken by the carpenters union having jurisdiction over the carpenters, to cease work on the job.

In the instant case the agent of the electricians' union which had no employees on the job and which had no power, direct or indirect, over the carpenters on the job, expressed an opinion that the job was unfair to labor. The picketing could have been disregarded with impunity by the carpen-

ters on the job and it was in fact found, by the Examiner and apparently affirmed by the Board and the court below, that there was no threat of reprisal or force or promise of benefit contained in the picketing and other talks made by Patterson. We contend that this finding carries with it the conclusion that Section 8(c) does apply to the facts in this case.

We do not believe that the result reached by the Board in the *Wadsworth* case is required by principles of statutory construction although there is undoubtedly inconsistency between the application of Section 8(c) to peaceful picketing and some of the expressions of the proponents of the Bill in the legislative history of the Act. There is no such inconsistency between the statutory provisions of the Act. Both Section 8(c) and Section 8(b)(4)(A) can be given effect without nullifying either section. It is respectfully submitted that Section 8(b)(4)(A) should be read in accordance with the views of the Trial Examiner in this case as limited to verbal or graphic utterance which constitute a strike signal and picketing not in the nature of a strike signal which is accompanied by behaviour which includes violence or threats of violence or offers of monetary or other reward (R. 265-281).

V.

The Board Erred In Formulating A Blanket Cease and Desist Order On the Findings In This Case.

The order in this case is in conflict with rulings of this and other courts on "blanket" orders. There was no finding

by the Board that the acts of petitioners on the Giorgi job will probably be applied on jobs of other employers. Indeed, the Board dismissed that part of the complaint which alleged that Local No. 501 and Patterson had threatened to induce or encourage employees of employers other than Deltorto or Giorgi to strike or refuse to perform services in order to force said other employers to cease doing business with Langer. Nevertheless, the order as formulated by the Board and approved by the court below requires petitioners to

> "cease and desist from inducing or encouraging the employees of Nicholas Deltorto, or *any employer*, by picketing or related conduct, to engage in a strike or a concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require Giorgi Construction Company, or *any other employer or person* to cease doing business with Samuel Langer" (R. 298, 336). (Italics supplied.)

See *N.L.R.B.* v. *Federal Engineering Co., Inc.*, 155 F.(2d) 17 (6th Cir.); *May Department Stores Co.* v. *N.L.R.B.*, 326 U. S. 376.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed and enforcement of the order of the Board should be denied.

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APPENDIX A

Excerpts from "Employment Outlook in the Building Trades," (U. S. Bureau of Labor Statistics, Occupational Outlook Series, Bulletin No. 967).

* * *

With respect to its labor force, the construction industry is outstanding in being an industry of journeymen; it is by far the largest industry in which this is the case. The skilled building trades make up the Nation's largest group of related skilled occupations—about three times as many as workers in the skilled machine-shop occupations, about eight times as many as in operation of railroad trains, about two and one-half times as many as in printing and publishing. Semiskilled workers are much less important, in building construction particularly; except for truck drivers, most of them perform services for the journeymen, and few of them take part in the journeymen's activity of using tools and installing materials. Unskilled workers (laborers) will continue to be needed permanently, as far as can now be seen, although their place has been reduced progressively by mechanization and further mechanization of unskilled operations seems virtually certain.

Journeymen have high hourly earnings and, during normal economic conditions, fairly high although seasonally irregular annual earnings. Status as a journeyman carries prestige; it means membership in a group universally recognized for skill and competence in a basic part of the country's economic life. It is an asset for employment in any

part of the country and, for the larger trades, in communities of any size. The work is satisfying, offering variety and opportunity to see the results of the work being done, in contrast to repetition and close specialization found in many other occupations. Journeyman status confers a greater degree of independence than that of most other occupations. A journeyman depends on his competence in the trade and on general economic conditions, rather than on either the fortunes or the good will of any particular employer; and he can change to another employer without penalty. His opportunity to establish his own business is greater than for the man in almost any factory occupation. While most such businesses are fairly small, they afford opportunity for expansion and many large contracting firms have been started and operated by former journeymen. For several contracting fields competition from persons with other backgrounds is keener than in the past, but the opportunities remain good for those with the appropriate combination of abilities.

The principal disadvantage of building work has been its extreme variation with general business conditions, so that a reduction in total nonagricultural employment or national income has been accompanied by a much greater reduction in construction employment. Less serious, but far from negligible in importance for the majority of workers, is seasonal lost time, even during comparatively good years. They must pay their yearly expenses from high earnings for about 8 or 9 months plus much lower earnings for the remaining months. Several weeks of continuous unemployment in winter is by no means uncommon, even in

good years. Unemployment compensation benefits are, of course, much below full-time earnings. *(Pages 1-2.)*

* * * *

Construction workers work in the contract construction industry (described on page 4), in force-account construction and maintenance, and as self-employed workers. In addition, some of them are employed on jobs having no direct connection with construction but using the skills of a construction trade. There is almost complete fluidity between these fields, so that a journeyman employed by a contractor at one time may be employed a few weeks later by a manufacturing firm to work on remodeling its plant office, or may be conducting a small business of his own as a self-employed workman.

The largest single field is the *contract construction industry*, for which average monthly employment was a little over 2 million during 1948, with a monthly range from 1,731,000 to 2,253,000. From January 1939 through December 1948 monthly employment ranged from 904,000 to 2,577,000.[1] A workman's employment in this industry is related to a given type of work rather than to any individual contractor, or even to any particular type of contractor. Thus, carpenters are employed mainly by builders and general building contractors, but any individual carpenters may in the course of a year be employed by a highway contractor to build forms for a concrete bridge, by an electrical or plumbing contractor to build a temporary job office and tool shed at the site where a large building is being put up, and by a carpentry contractor for the framing and rough carpentry

[1] These figures include other employees as well as members of the skilled trades.

on a church, as well as by one or more builders or general building contractors. Similarly a painter would ordinarily be employed by a painting contractor but might be employed by a general building contractor having his own painting crew, or by a general building contractor to paint a job office or even some of his construction machinery. The contractor designates the work to be done; plans the sequence of operations at least broadly, either in person or through a superintendent or foreman; supplies the materials as needed; supplies any machinery, equipment, and special tools that are needed; and assumes full responsibility for the financial outcome of his part of the total construction work (which may be the entire structure, or may be a single part of the job such as painting or electrical wiring). The contractor also is responsible for acceptability of the completed work to the owner or architect and to the building inspector and other appropriate public officials. A journeyman's responsibility is for competent performance of the work assigned to him and for notifying the foreman or contractor of any unsatisfactory conditions affecting his work, such as errors in related work of other trades.

Force-account employment, although smaller, is an important employment field. Here the employer is a business establishment or government body performing construction work for its own use, instead of engaging a contractor to handle it. In the field of new construction that is commonest for paving, although it is also used to some degree for all other types, including building. New construction projects carried out by force account can be very large, but usually are of moderate or small size because of the disadvantages

of forming and later dissolving large organizations for infrequent jobs of unusual size. The characteristics of such employment on new construction are essentially the same as those of employment by contractors on projects of the same type. Force-account work is more common, however, for maintenance, repairs, and minor alterations. Industrial plants, hotels, owners of office buildings and large apartment buildings, boards of education, State and county highway commissions, city water departments, organizations of all types employ workers directly to maintain and repair their property, to do remodeling as necessary, and to make minor improvements. Employment here is frequently on a year-round basis with wages often at a weekly or monthly rather than an hourly rate. Unless the property involved is very large there is very likely to be less specialization than in new work, so that a workman is often hired on the basis of doing all work within his own trade plus the commoner jobs in related trades. In some cases there is a combination of building work and shop work. Thus a maintenance painter in a hotel might refinish marred furniture as occasion arose, as well as doing painting, paperhanging and other decorating in the guest rooms, corridors, and other parts of the building.

Self-employment is the third large field. A self-employed workman is hired directly by a series of property owners or their agents for specific jobs. This has some of the characteristics of wage employment, and, in other respects, it resembles contracting. It is limited to small jobs, in which the workman can do most if not all of the work himself; he may hire one or two men to work for him occasionally, but

not regularly, and, in any case, works with the tools of his trade. He may be paid by the job and may include materials in an over-all price, or the materials may be provided by the owner; in other cases, he is paid by the hour or day. In any case he does not sublet work to others—if the job includes work which he cannot do (such as plastering or electrical work in small alterations consisting mainly of carpentry) the owner arranges for this directly. A self-employed workman resembles a contractor in taking responsibility for completion of the job, in planning the way in which it is to be done, in providing any equipment needed as well as hand tools, and (in most cases) in scheduling and ordering the materials needed even though the material bills may be paid directly by the owner. He resembles a wage employee in that his income is derived mainly from his own direct work.

Self-employment is commonest in those fields having a large volume of maintenance, repair, and small alteration jobs—particularly painting and decorating and carpentry. It is present in other trades also but is less common than it would otherwise be in the trades for which a State or municipal license is commonly required (especially plumbing and electrical work). It is, of course, completely impractical for any type of work needing expensive machinery or shop equipment. Self-employment is probably as common as ever for painting and decorating. For carpentry, however, it has met keen competition in many areas from home improvement establishments which seek small jobs of all sorts by active sales efforts, often with a sales room containing displays of the types of work they offer. *(Pages 3-4.)*

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In its organizational form, the contract construction industry is unique among American industries. This form has developed from the tremendous variety in its product, with consequent need for great flexibility, which in turn is provided by specialization. For most types of construction several contractors work jointly, each doing the kinds of work for which he is especially fitted.

The industry is usually classified into three groups of firms: Builders, general contractors, and special trade contractors. *Builders* operate on their own account, putting up houses; in some cases, apartment buildings; occasionally, stores or other nonresidential buildings. The houses are ordinarily built for sale, and the other buildings may be intended either for sale or for ownership and rental.[2] The builders decide on the characteristics of their projects; obtain designs; buy land; arrange financing; arrange for site improvements, such as water lines, sewer lines, and street paving; and in the building operations proper do the work corresponding to that of general contractors as described below.

The term "contractor" refers to a firm performing construction work authorized by others, rather than work undertaken on its own initiative. The form of authorization differs widely and is not limited to a written agreement to build a structure described in more or less detail by drawings and specifications at a stipulated price. There are numerous other types of written agreements, and in some

[2] Persons and organizations performing construction for their own use are not regarded as part of the construction industry even though they buy materials, hire workmen, and direct the work.

cases the authorization is verbal only. But decision to proceed, selection of land, obtaining of individual or stock architectural drawings, arrangement of financing and other matters separate from the construction operations themselves are the responsibility of the owner, and any advice or assistance which the contractor may give is outside of his basic function of carrying out the construction operations.

General contractors construct buildings and other structures and do alteration and repair work, on contract for owners. They take responsibility for the entire job, except that in some cases certain parts of the work are omitted from the general contract and arranged separately by the owner or architect. Standard practice is that general contractors carry out the major part of each project with their own forces and sublet the remainder to other contractors (special trade contractors), but usage with respect to the amount and kinds of work sublet differs greatly. There are three types of general contractors, based on the type of construction which they undertake: Building; highway, which includes other forms of paving such as city streets or airport landing strips; and heavy, which includes all other important forms of nonbuilding construction (dams, piers, sewer or water lines, dredging, tunnels, many other forms).

Special trade contractors carry out the work of a single trade or two or more closely related trades—painting, electrical work, plumbing with or without steam and hot water heating, sheet metal work with or without roofing, etc. Much of this work is done for builders or general contrac-

tors, while other jobs (most repair jobs, and some new jobs as well) are done directly for the owners. There is also secondary subcontracting, as when a plastering contractor receives a subcontract for plastering and lathing and sublets the lathing to a lathing contractor.

Ordinarily a contractor provides as well as installs all materials for his part of the project, but not uncommonly specified materials are provided for him by others, if the owner or general contractor has particularly favorable buying arrangements for certain items. The extreme case is "labor only" contracting, in which the person or firm awarding the contract provides all materials. This can be bona fide contracting, with the contractor operating an established permanent business and having the customary employer relationship to his workers. As such, it is found mainly in some of the specialized fields—setting of reenforcing steel or cut stone for general contractors, installation of numerous specialities in the ornamental metal field where a manufacturer's representative obtains an over-all contract but sublets installation to a local ornamental iron contractor, etc. This is entirely distinct from "labor only" subcontracting as a disguised form of piecework employment, described briefly on page 24.

The 1939 census of construction, reports 215,050 firms in the construction industry—3,705 builders, 29,641 general building contractors, 5,517 other general contractors, and 176,187 special trade contractors. Most of these were small. Well over half of the builders, about two-thirds of the general building contractors, and more than eleven-twelfths of the special trade contractors performed work valued at less

than $25,000 during the year.[3] In fact, almost a fifth of the general building contractors and three-fifths of the special trade contractors performed work valued at $5,000 or less. At the opposite extreme were a few large firms performing work valued at $500,000 or over. There were only 296 building contractors in this group, but their work performed was over $310,000,000, or more than a quarter of the work performed by all building contractors. Of the special trade contractors only 163 were in this class, but the value of work which they performed ($213,000,000) was nine-tenths as great as that of the 107,620 special trade contractors performing work valued under $5,000 ($233,000,000). *(Pages 4-8.)*

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Construction is active, strenuous work, but physical demands are not excessive. Most of the operations requiring principally muscle-power have been taken over largely by machinery, and for those where such a change has not yet been practical, such as carrying of heavy plumbing fixtures, custom and working agreements usually assign a sufficient number of men to prevent undue strain or risk of injury. Nevertheless the physical exertion of handling tools and materials is much greater than in most bench jobs and a greater degree of agility is required. Continuous standing is frequently involved, and from time to time it is necessary to squat, to work in cramped quarters, or to work in uncomfortable positions.

For many trades a large part of the work is outdoors, and for almost all trades much work is in unfinished build-

[3] Value of work performed excludes the value of work sublet to others and so is less than total gross operating income for the year.

ings. This means exposure to the weather and low temperatures for some of the indoor work. Artificial heat is commonly provided for indoor winter work after buildings are sufficiently enclosed, but the temperatures maintained are frequently lower than those customary for winter factory work.

Since most construction activities last only a few months, and all are regarded as temporary, the facilities provided are usually rather primitive. On fairly large jobs, drinking water is provided by portable fountains, but a hose or a bucket and dipper are still in widespread use. On large jobs, particularly in downtown city locations, toilet facilities are provided with standard fixtures connected to supply and waste lines, and sometimes these compare favorably with good factory toilets. Elsewhere toilet facilities are crude, consisting most commonly of temporary outhouses; on some small outlying jobs, no toilets of any sort are provided. Showers are seldom if ever provided except occasionally at the very largest metropolitan projects, or at work camps for projects in remote locations. No formal arrangement for washing before lunch is common, but running water is often available at a hose hydrant. A shed is customary for storage of clothing, lunches, etc., and for overnight storage of overalls and tools, without individual lockers; although locked outside of working hours, these give little protection against burglary, especially on small jobs not having a watchman.

The location of construction work in any area is changing constantly, so that wherever a worker lives he often has to make a fairly long trip to and from work. In cities of

moderate or large size a definite working area is usually established, which generally is the city itself exclusive of the suburbs; for jobs outside of this area, transportation cost is paid by the employer, and the time needed for suburban transportation is considered and paid for as working time. Comparable arrangements are commonly made for inconveniently located jobs within the designated working area during periods of labor shortage, but not at other times.

All skilled workers need tools, the number and total cost depending on the trade. These are owned by the journeymen, except that in the electrical and pipe trades working agreements frequently provide that all tools are to be provided by the contractors. A set sufficient for most needs is bought during apprenticeship. Later purchases are customary to obtain less common tools and new types of tools, to replace those lost or stolen, and to replace usable tools with improved or better-quality models. Theft of entire tool kits outside of working hours has been troublesome, especially on outlying jobs. Not so many years ago the entire loss, which for a carpenter would be well over $100, was borne by the individual workman. Working agreements now usually provide that at least a large part, and in some cases substantially all, of this loss be borne by the employer.

Employment is predominantly on an hourly basis, with time off for sickness or personal business accompanied by loss of pay. Lost time because of bad weather or other reasons beyond the workers' control likewise means loss of pay, a serious matter to bricklayers and others doing outdoor work. Holidays are unpaid, except that in a very few

areas working agreements provide pay for some of the trades on the major public holidays. Standard working hours have been established almost everywhere, most commonly from 8:00 to 4:30 on Monday through Friday; in some trades and localities the standard workday is 7 hours or 6 hours. Usually work at other times is paid for at a premium overtime rate, regardless of whether or not the standard hours have been worked.

Employment and lay-off practices are highly informal, in keeping with the flexibility of the construction industry. This informality is made practical by the craft or trade approach in training, whereby a fully trained worker can perform any type of work in his field. Hence, while workers are ordinarily laid off as soon as they are no longer needed, they are hired readily and with scarcely any formality at any project at which additional workers are wanted. Experience and preference within the rather broad field of any trade influences both applicant and foreman in hiring, but these are not rigid; a carpenter who enjoys the careful workmanship of "trimming" (installation of millwork, hardware, finish carpentry in general) would ordinarily seek such work if unemployed but, if necessary, would take and be acceptable for other carpentry work; and a foreman having trimming to be done would ordinarily prefer an applicant specializing in such work but, in the absence of such an applicant, would hire any competent carpenter for the work.

Employment in a given trade is naturally much more stable in any employment area than in the work of a single contractor. Some jobs are starting as others are finishing,

and some contractors are hiring workers as others are laying off. Hence, getting a new job is ordinarily a simple matter when construction is reasonably active, involving little lost time—often none at all. Even in good years, however, there is seasonal unemployment. As the rate of activity goes down seasonally from October to February, workers are being hired for new projects at a slower rate than they are being laid off at projects approaching completion. From late fall until early spring, lost time between lay-offs and new jobs is greater for most workers than in spring, summer, and fall.

For most trades migration is a matter of choice, although there are exceptions. When large construction projects are undertaken in small communities or in isolated localities, comparatively few of the workers live within reasonable commuting distance. When employment is high, acceptance of such a job is purely voluntary, and, presumably, few of the workers who go to them have strong ties with their home localities. When employment is only fair, men with family responsibilities have to choose between the prospect of intermittent unemployment at home and of a long, steady job elsewhere. This condition is not unique to construction but is more prominent in that industry than in most manufacturing industries. *(Pages 20-21.)*

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A contractor's total employment requirements at any particular project are likely to vary fairly rapidly, and his need for workers in a particular occupation varies even more rapidly. Peak requirements lasting only a few days, or even only a day or so, are by no means uncommon.

Special trade contractors are able to meet this situation

fairly well by transferring workers from one job to another, since they usually have a number of jobs in some stage of progress at a time. Even they, however, are ordinarily unable to schedule these for continued uniformity of their total employment because their ability to proceed at any job is dependent on the readiness of related work done by the general contractor or other special trade contractors. General contractors have less flexibility in this respect because their business usually consists of a smaller number of individually larger jobs[4], so that lay-offs are more common for their workers.

Hence, employment is on a temporary rather than a permanent basis. It is true that many thousands of journeymen have worked steadily for the same employers for years and that contractors have no more desire than other employers to lay off satisfactory workers unnecessarily. Nevertheless the conditions under which the industry operates have created the general understanding that employment can be terminated at any time.

Since work for any given employer is usually temporary, employer-employee relations are traditionally informal and commonly casual. Building workers tend to regard themselves as members of given trades, rather than as employees of given contractors. The permanent asset is competence in a recognized trade, rather than seniority or other preferential status with a given firm.

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[4] Larger as measured by the value of work performed by the contractor's own employees, or by the hours worked by those employees. In this sense, any particular building is a much larger job for the general contractor who puts up the basic structure than for any of the special trade contractors.

Journeymen are ordinarily hired by the foreman. He selects applicants at the job and often telephones men he knows to offer them work. For some trades in some localities, agreements provide that contractors or foremen shall inform the union office of need for additional workers and shall hire those sent in response, but with the right to dismiss any regarded as unsatisfactory after a brief trial.[5] Hiring through the union office is also done in cases where it is not required by working agreements. The foreman also discharges employees, at any time and for any reason—reduction in force, dissatisfaction with work, or merely personal antagonism. A newly hired worker may be discharged after a few hours while hiring in the same trade is still in progress. He is subject to lay-off at any time, either permanent (as the work for which he was hired approaches completion) or temporary, with instructions to return at a stated time, because of a temporary shortage of material, or to allow other trades to complete work which must be done before he can proceed further with his own work. A carpenter discharged from work on concrete forms because he is too painstaking and therefore too slow for that grade of work, may be hired readily by the same foreman at a later stage of the same job for installing millwork, where his careful workmanship is appropriate. The other side of this arrangement is that a workman is free to quit at any time for any reason—to take a job closer to home, a job likely to continue for several months, a job expected to provide more hours of work weekly because of greater over-

[5] These agreements provide that workers may be hired otherwise, if the union is unable to provide men within a specified period. They are subject to such pertinent legislation as may be in effect from time to time.

time or better protection from weather interruptions, a job in a specialty of his trade which he enjoys particularly, or for any other reason.

There are no formal employment records, in the sense in which these are commonly maintained for factory employment. Workers are hired principally on the basis of apparent ability to do the work on hand; they tell the foreman about the work they have done and, if hired, are kept on the job as long as work is available for which they are satisfactory.

A contractor whose volume of work permits usually tries to retain a semipermanent nucleus of journeymen who, he has found, can do a good job, expanding this nucleus by hiring others as needed and then laying them off when the peak is over.

Along with its undesirable features, this rather loose employment relationship has two very real advantages to journeymen. The first is separation of their own fortunes from those of any single employer. Seniority is not a consideration in either hiring or lay-off.[6] Hence, discontinuance of a firm from death or retirement of the proprietor, or from bankruptcy or voluntary liquidation, from an employment standpoint is merely an incident to its workers, whereas it is a disaster in those industries having irregular employment along with strict seniority. The second advantage is

[6] In a very few areas there have been partial seniority systems for some trades, providing that workers on a particular project shall be laid off in reverse order of their hiring on that project. This is quite different from a company-wide seniority system; the difference in seniority standing between the lowest and the highest man on the list is seldom more than a few months and, frequently, is only a few weeks.

the personal independence in action and attitude of workers whose employment is governed by their own competence along with general business conditions rather than by their standing in a single business firm. *(Pages 22-23.)*

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The next step in promotion as an employee is to general foreman or superintendent. Here the situation differs among trades, but in all cases such a man is a full-time management representative of the contractor and does not work with tools or install materials. Payment is ordinarily on a straight salary basis and is commonly 25 to 50 per cent above full-time hourly earnings for his trade—the amount depending on his responsibilities and the size of the operations.

A general foreman or superintendent for a general contractor is responsible for the entire job. He directs the work of the general contractor's men, ordinarily doing so through the gang foremen, and coordinates the work of the various subcontractors' crews. He has no authority over the subcontractors' foremen and gives them information and comments (his interpretation of drawings affecting their work, the general progress schedule laid out, conformity of their work to his own or to that of other subcontractors, etc.) but not direct orders. Disagreements which cannot be settled directly are referred to the respective contractors. A general foreman of this type is ordinarily a bricklayer or carpenter by trade. A superintendent is commonly a bricklayer or carpenter but on very large jobs is likely to be a civil engineer, an architect, or a man with administrative background.

In the special trades (plumbing, electrical work, painting, etc.) general foremen and superintendents are less common than in general contracting. They are responsible only for the work of their own trades and for its direct relation to other work. These men are employed only by the largest of the special trade contractors. In some cases such a man works on an unusually large job, where he is in charge of all of his employers' gang foremen; in other cases he is in charge of a number of jobs, calling at each daily to review progress, any problems that have risen, expected material and equipment needs, etc.

It is possible for a workman to become a contractor, and many thousands have done so. Sound journeyman knowledge is a great help, but ability to plan work, to foresee needs and problems, to direct others, and to estimate material and time requirements for jobs on which he is preparing bids are much more useful than unusual craftsmanship skill. Annual earnings vary greatly with a number of factors—capital, the current volume of building (which affects both the volume of business available and the profit margin which can be included realistically in bids), ability to plan and direct field work, and business ability. The common belief that contracting is a sure, rapid path to wealth is exaggerated, to say the least. In 1939, 39 per cent of all general building contractors performed work valued at less than $10,000 and more than 32 per cent performed work valued at $10,000 up to $25,000; among special trade contractors, almost 78 per cent performed work valued at less than $10,000, and 14 per cent performed work valued

at $10,000 up to $25,000.[7] Obviously most of these small contractors must have had comparatively modest earnings; probably earnings for many were less than would have been provided by full-time employment as foremen or even as journeymen at their respective trades. *(Pages 24-25.)*

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Many small contractors act as working foreman on their jobs, doing as much as possible of their work (soliciting orders and contracts, preparing bids, keeping books, deciding on orders for materials, etc.) in the evenings. This is a wearing schedule, its advantage being reduction of expenses when the business is small and capital is limited. Its disadvantage is that management duties may receive insufficient careful thought. For small-scale contracting, with perhaps no more than half a dozen employees, management duties are usually considerably less than a full-time job, but considerably more than can be handled successfully on a spare-time basis. The expense of taking sufficient time during regular working hours for at least a part of the planning of operations, careful scheduling of material requirements, negotiations with material dealers and others, etc., is likely to be less than losses resulting from errors and neglect when these are compressed into evenings following full days of hard work. *(Page 26.)*

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Cutting across the entire construction field are the three

[7] 16th Census: Census of Business, vol. IV: Construction: table 5-A, p. 53. Value of work performed means work carried out during the year with their own employees, rather than total contracts received or completed during the year; it excludes the value of those parts of the work sublet to others. Many of the smallest of the contractors might perhaps have been regarded as self-employed workmen.

classes of workers by whom construction is performed: journeymen; tenders and other semiskilled workers; and laborers. While in some respects foremen and apprentices can each be regarded as a separate class, both are grouped with journeymen in most parts of this bulletin because of very great similarities in many important features of their work. Their distinguishing characteristics are stated below for the building trades as a whole rather than separately for the individual trades.

Journeymen

By far the most important class is that of journeymen or skilled workers. These are the men who operate tools and machines and who process and install materials. As already mentioned, they are divided among numerous trades, each having a designated field in the over-all construction operation. The trades differ among themselves in the required skills, knowledge of materials, and knowledge of design or lay out. They are alike, however, in that in each case the standard of competence is ability to perform all types of work within the range of the trade, good working knowledge of all of its materials and how they are used, and understanding of the principles on which the work of the trade is based. Some journeymen are naturally more capable than others, and in most construction trades, as in other occupations, there are difficult or uncommon jobs for which journeymen with unusual dexterity or long experience are preferred.

While the kinds of work differ among the separate trades, most of them require a similar degree of skill. Laying out

the framing members for a dormer window in a roof is quite different from laying out the plumbing system for a house, but they call for the same general kind and degree of ability. Each job requires knowledge of the assembly to be made, knowledge of the materials, and knowledge of what to do as well as how to do it. It is such knowledge, rather than merely facility in the use of tools, that marks a journeyman; skill with tools is necessary but is only part of the all-round ability required.

Foremen in any of the skilled trades are invariably journeymen who have been promoted. Most commonly a foreman is in charge only of the crew for his own trade (usually including any tenders, helpers, or laborers working with the journeymen) but not infrequently he is in charge of all of his employer's workers. Thus, either a carpenter or a bricklayer might be in charge of a general contractor's entire gang at a project where several houses are being built. On very large jobs there are frequently foremen for laborers and for some of the semiskilled occupations, but these men have a smaller range of responsibilities than do the foremen in the skilled trades. On such jobs there are commonly several foremen in the larger trades, each in charge of the members of his trade working at a particular part of the project, and there may also be subforemen ("straw bosses," "pushers"); there is also a general foreman or superintendent responsible for the coordination of all work, who usually delegates direct supervision of the journeymen to the gang foremen.

Foremen are responsible for planning the work in their respective trades, at least broadly if not in detail, and for

seeing that it is carried out correctly and quickly. They call attention to any unusual requirements or situations needing special attention; arrange for delivery of materials as needed; hire, lay off, and discharge workers; represent the contractor in dealings with other contractors or their foremen, the owner, and the architect, interpret the drawings, if these are not entirely clear, or else obtain an interpretation from the contractor or the architect; and keep pay-roll records and records of material deliveries, unless the job is large enough to have a timekeeper. In most localities small jobs are run by "working foremen" who work at their trades along with members of their own crews except when engaged in supervisory or management duties, while on large jobs the foremen do no actual production work. The general contractor's foreman, whether a working foreman in charge of three or four men or a general foreman directing several hundred men through trade foremen and sub-foremen, is responsible for coordination of the work of all contractors on the job but has definite authority over the employees of the general contractor only. *(Pages 35-36.)*

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Any construction work except the simplest uses a wide variety of materials, each with its own characteristics and each requiring appropriate tools and methods of handling. Most of these materials appear in many different types of structures, and the job of putting them in place is essentially the same. Thus brickwork is used in houses and apartment buildings, churches, hospitals, factories, in fact buildings of all types, and also in nonbuilding structures like walls or utility manholes. The operations involved in

the brickwork are essentially the same for all of these structures and for many more; but in any single type of structure, such as a two-story house, the job of building the brick walls and chimney is basically different from the other jobs needing to be done.

Hence, construction operations have long been divided among a number of different trades. Some have been recognized as distinct occupations for thousands of years, while others arose fairly recently when technical developments (electric wiring, elevators, structural steel work, and power-operated construction machinery, etc.) created types of work clearly outside the fields of the older trades. Technical developments have changed the characteristics of most trades, particularly within the last 25 years, but distinct trades continue to be the basis on which construction operations are organized. The increasing complexity of buildings and the increasing range of materials and tools, combine to increase rather than diminish the necessity for division of the exceedingly wide construction field.

The field of each trade is essentially the processing and installation of a given group of related materials for any type of structure, with use of the appropriate tools and equipment. Until about 50 years ago trade distinctions along these lines were comparatively simple, but new materials and methods have made the distinctions much more complicated. Thus, the traditional materials for carpentry were rough lumber, finished lumber and millwork, plus supplementary hardware. To these have been added plywood, rigid insulating board, gypsum board, other building board, nonrigid insulation, "soft" floors (linoleum,

asphalt tile, etc.), cement-asbestos shingles, and many others. Meanwhile metal products have become fairly common for uses where wood had been universal—sash and frames, doors and frames, moulding, movable partitions, floor joists, cabinets, and numerous others. Similar examples could be given for other trades.

Developments of this type have meant some degree of turbulence for construction as a whole, have changed the boundaries between trades, and have brought numerous instances of disagreement regarding the trade by which a new material was to be used. Turbulence has been present when there was no jurisdictional conflict. This is well illustrated by the methods used for fire-resistive protection of structural steel, in building construction. Steel columns and beams were covered with specially shaped tile, laid by bricklayers, for about the first quarter century of fire-resistive steel construction.[8] Then improved knowledge of concrete and improved means for its handling brought a rapid change to covering with poured concrete,[9] which has been standard for about 30 years. Now a quite new method has appeared, enclosure of the steelwork with metal lath to which a new type of plaster is applied by plasterers. This use of plaster for fireproofing is particularly significant as an indication of change, because older types of

[8] Brick, terra cotta, and other masonry materials, which had been used for such fireproofing of cast and wrought iron as was done prior to the development of steel-frame construction, were also used but were superseded by hollow tile.

[9] Although concrete used for fireproofing is quite distinct from reenforced concrete, this change to fireproofing concrete for the steel work was greatly hastened by an accompanying change from flat masonry arches to reenforced concrete for the floors.

plaster were used to some degree for the same purpose about 50 years ago and found to be unsatisfactory. The latest method has the great advantage of a marked saving in weight and seems likely to become a common procedure, if not the standard procedure. Yet the possibility exists that in turn it may be partially or entirely replaced in the future by a still different method. *(Pages 37-38.)*

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APPENDIX B

The pertinent provisions of the National Labor Relations Act, as amended (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 et seq., as amended by the Act of June 23, 1947, Public Law 101, 80th Congress, 1st Session, 29 U. S. C., Supp. 151 et seq.) are as follows:

Sec. 2. When used in this Act—

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"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

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Section 8.

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"(b) It shall be an unfair labor practice for a labor organization or its agents—

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"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is : (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representatives of such employees under the provisions of Section 9: * * *

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"(c) The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in writing, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * * *

Section 10. "(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affect-

ing commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * * *

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the plead-

ings and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * * *

"(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4 (A), (B), or (C) of Section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts

business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law; *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the court shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony; *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

* * * * * *

Sec. 13. "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

Sec. 303. "(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

"(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other persons;

"(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of of such employees under the provisions of section 9 of the National Labor Relations Act;

"(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the

representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

"(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representatives for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

Sec. 501. "When used in this Act—

"(1) The term 'industry affecting commerce' means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

"(2) The term 'strike' includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

"(3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' 'representative,' 'person,' and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."

Sec. 102. "No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of enactment of this Act which did not constitute an unfair labor practice prior thereto and the provisions of Section 8 (a) (3) and Sections 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactments, but prior to the effective date of this title, if the per-

formance of such obligation would not have constituted an unfair labor practice under Section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto."

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No. 108

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 501, A. F. OF L., AND WILLIAM PATTERSON,
PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND ~~DISTRICT~~ CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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The Proviso to Section 8(b)(4)(A)

Respondents in No. 313 contend that the proviso to Sec. 8(b)(4)(A) means that only a union which represents a majority of the employees in the plant can lawfully enlist the aid of employees of other employers not to cross the picket line (Resp. Br. 30-31). In view of the interrelationship of the four cases which have been set down on the summary docket, petitioners in No. 108 respectfully offer the following comment on the legislative history of the Act which bears upon this problem.

The House bill, as reported, explicitly forbade stranger picketing (Appendix A *infra*) and omitted any definition of the term "labor dispute." Congressman Holifield, who opposed the bill, stated on the floor of the House on April 17, 1947 that Sec. 12(a)(2) was unconstitutional on the basis of the decision of this Court in *A.F.L.* v. *Swing*, 312 U.S. 287; N.L.R.B., Legislative History L.M.R.A., 841-842. The House nevertheless passed the bill, including Sec. 12(a)(2) as reported (N.L.R.B., Legislative History L.M.R.A., 205). The Senate bill, as reported, did not contain a prohibition of stranger picketing and retained the definition of the term "labor dispute" in the Wagner Act which had originally been drawn from the Norris-LaGuardia Act (Appendix A). This definition of labor dispute included controversies "regardless of whether the disputants stand in the proximate relation of employer and employee." The proviso now in Sec. 8(b)(4)(A) was set forth in the Senate bill as reported (N.L.R.B., Legislative History L.M.R.A., 114). It passed the Senate in this form (*id. at* 241) and is the present provision of the Act (*id. at* 7, 511).

It is entirely clear that the House prohibition of stranger picketing was dropped in the conference report (Appendix A) and that the proviso was merely intended to make clear to the Congress and the country that the traditional right of labor to refuse to cross a picket line would not result in any penalties upon those exercising the right under the conditions of the proviso (Appendix A).

An illustration of this application of the proviso is to be found in *Cyril D. Cordova & Bro.*, 91 N.L.R.B. No. 187, 26 L.R.R.M. 1628, where the Board held that refusal by an

employee to cross a picket line established by a majority union did not constitute justification for discharge by the employer.

Illustrations of Secondary Boycotts in the Legislative History of Section 8(b)(4)(A) of the Act.

The National Labor Relations Board concedes that the type of case involved in the instant proceeding was not specifically referred to by the proponents of the legislation (Pet. Br. in No. 393, p. 60). For an exhaustive statement of the types of cases which the proponents of the legislation did refer to, see Hearings Before the House Committee on Education and Labor on Bills to Amend and Repeal the National Labor Relations Act, 80th Cong., 1st Sess., pp. 2545-2603, 579-582, 339-347.

Respectfully submitted,

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APPENDIX A

Pertinent excerpts from the legislative history of the Act on the subject of stranger picketing are as follows:

1. H. R. 3020, 80th Cong., 1st Sess., introduced April 10, 1947, reported with amendments April 11, 1947, Sec. 12(a)(2):

> "The following activity, when affecting commerce, shall be unlawful concerted activity:
>
> . . ."Picketing an employer's premises for the purpose of leading persons to believe that there exists a labor dispute involving such employer, in any case in which the employees are not involved in a labor dispute with their employer." (N.L.R.B., Legislative History, L.M.R.A., 78).

2. H. Report No. 245, 80th Cong., 1st Sess., p. 44 (April 11, 1947):

> "Sec. 12(a)(2)—There obviously is no justification for picketing a place of business in which no labor dispute exists." (N.L.R.B., Legislative History, L.M.R.A., 335).

3. S. 1126, 80th Cong., 1st Sess., as reported April 17, 1947, Sec. 2(9):

> "When used in this Act:
>
> . . ."The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing,

maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." (N.L.R.B., Legislative History, L.M.R.A., 104).

4. Sen. Report No. 105, 80th Cong., 1st Sess., p. 23, April 17, 1947:

"Attached to Sec. 8(b)(4) is a proviso clause, which makes it clear that it shall not be unlawful for any person to refuse to enter upon the premises of any employer (other than his own) if the employees of that employer are engaged in a strike authorized by a union entitled to exclusive recognition. In other words, refusing to cross a picket line or otherwise refusing to engage in strike breaking activities would not be deemed an unfair labor practice unless the strike is a 'wildcat' strike by a minority group." (N.L.R.B., Legislative History, L.M.R.A., 78).

5. 80th Cong., 1st Sess., H. R. Conference Report No. 510, June 3, 1947, p. 34:

"The House bill omitted the definition which is contained in existing law of the term 'labor dispute' since a definition of that term was not considered necessary under the structure of the House Bill. The Senate amendment contained the definition contained in the existing law. The conference agreement follows the provision of the Senate amendment in this respect." (N.L.R.B., Legislative History, L.M.R.A., 538).

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